

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**FUSION DANCE ACADEMY**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages

**Employer:** Fusion Dance Academy, 15 Fourth Street, Dover, NH 03820

**Date of Hearing:** October 19, 2016

**Case No.:** 53546

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on July 28, 2016. The notice was sent to the employer and there was no written objection. There was a partial payment of the claim and the claimant requested a hearing for the entire amount of the Wage Claim. The Notice of Hearing was sent to both parties on September 21, 2016. The employer was granted a telephonic hearing. The claimant was present for the hearing.

The claimant testified that she worked for the employer for two years. At the start of the summer of 2016, the claimant testified that she was raised from an hourly rate of \$18.00 to an hourly rate of \$20.00. In the Wage Claim the claimant stated that she was due 92.5 hours at the \$20.00 per hour rate. The Wage Claim was filed for \$1,850.00 and there was a payment made of \$1,287.00. The claimant testified that the balance due for the Wage Claim was \$563.00.

The employer testified that the claimant was working for \$18.00 per hour. There was a proposal of \$20.00 per hour starting in September with a new contract. The claimant never signed the contract and left employment prior to September.

The employer testified that the hours of the operation of the camp were different from the hours that the claimant testified to. The claimant stated that the camp hours were from 7:30 am until 5:30 pm, a ten hour day. The employer testified that the camp hours were from 9:00 am until 4:00 pm for a seven hour day. The employer also said that the claimant may have worked out some additional hours to babysit for some students but that time was set up and charged for by the claimant.

The employer believes that all hours worked have been paid at the rate of \$18.00 per hour.

### **FINDINGS OF FACT**

RSA 275:43 I

I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is valid in part. The claimant has the burden to show that there are wages due and owing and she did meet part of this burden.

The Hearing Officer finds that the claimant had not started the hourly rate of \$20.00. All of the hours worked were at the \$18.00 hourly rate. The claimant testified that the camp was scheduled for fifty hours per week for two weeks and yet she only put in for 88 hours for the two weeks. The Hearing Officer finds that the employer's testimony of a 35 hour per week camp for a total of 70 hours is credible.

The claimant's testimony on her separate classes is credible and due and owing. The employer has the responsibility of tracking and keeping a record of hours worked. The documentation was never presented during the hearing.

The claimant is due 70 hours for the two weeks of camp. She is also due the 4.5 hours of training. The claimant was working at a rate of \$18.00 per hour. The hourly rate had never changed to \$20.00. Therefore the claimant is due \$1,260.00 for the two weeks of camp and

\$81.00 for the lessons. The claimant has been paid \$1,287.00 and so the Wage Claim is valid in the amount of \$54.00.

**DECISION and ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Hearing Officer finds that the claimant proved that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$54.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$54.00 less any applicable taxes, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: November 2, 2016  
Original: Claimant  
cc: Employer  
TFH/das