

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

TUMBLEDOWN CAFÉ

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: Tumbledown Café, 286 Wentworth Road, Brookfield, New Hampshire 03872

Date of Hearing: November 16, 2016

Case No.: 53659

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 16, 2016. The notice was sent to the employer and there was no written response to the Wage Claim. The Notice of Hearing was sent to both parties on October 21, 2016.

The claimant testified that he worked for nineteen hours and was never paid his \$12.00 hourly rate. He stated that he had some problems with the way the restaurant was managed and he was terminated from his employment.

The employer testified that the claimant worked on a schedule of 4pm until 10pm. As a new employee, the claimant was paid at a rate of \$10.00 per hour. The employer testified that a check was issued on April 22, 2016, for the \$120.00 due in wages. The employer testified the check was issued and it was never cashed. The employer testified that the claimant is confused and/or incorrect relative to the rate of pay and the number of hours worked.

During the hearing, the parties agreed to add Liquidated Damages (RSA 275:44 IV) as an issue for consideration. The claimant feels that the employer was willful and did not have good cause for failing to pay him. The employer maintains that the claimant was paid on the next regular payday and that he was paid in full.

FINDINGS OF FACT

275:43 Weekly–

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.

RSA 275:44 IV-

If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

This part of the law allows for a claimant to seek liquidated damages up to the amount of the Wage Claim when the decision is in favor of the claimant. The claimant is asking the Hearing Officer to rule that the employer was willful and did not have good cause in not paying the wages.

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 and invalid in part. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant filed the Wage Claim for the amount of \$240.00 which represented nineteen hours of work at \$12.00 per hour.

The employer stated that the claimant was confused about the number of hours worked and the rate of pay per hour. The employer testified, credibly, that the claimant worked for six hours each day and the starting rate for a new employee was \$10.00 per hour.

The employer was credible in their testimony that a check was issued for the wages due and the claimant never cashed the check. Accordingly, it is found by the Hearing Officer that the employer does owe the claimant \$120.00

It is also found that the request for liquidated damages is invalid. The employer did not act willfully failing to pay the wages, rather the employer attempted to pay the wages by issuing a check that was never cashed.

DECISION and ORDER

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

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 he was not paid all wages due, (and that the employer testified that certain wages were not paid because the corresponding check was not cashed), it is hereby ruled that the Wage Claim is valid in the amount of \$120.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$120.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 8, 2016
Original: Claimant
cc: Employer
TFH/das