

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

EVERGREEN AUTO AND TRUCK RECYCLING

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Evergreen Auto and Truck Recycling, 4 Main Street, Kingston, NH 03848

Date of Hearing: January 10, 2017

Case No.: 54157

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 13, 2016. The notice was sent to the employer and there was an objection. The notice was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on December 15, 2016.

The claimant testified that he was due two paychecks for a total of \$1,000.00. He testified that he was a salaried employee who was paid at a rate of \$500.00 per week. He worked for the employer for about eight months.

The claimant testified that he was hired at a rate of \$200.00 per week and was given an increase to \$500.00 per week in April of 2006. He stated that there was no deduction for federal taxes in his paychecks.

The employer presented a case that showed he paid all checks until the last check in September of 2016. The employer testified that he stopped payment on the check because he paid a bill for the claimant to Cornwell Tools for \$227.00. He feels that the claimant owes him this money. The employer also testified that he had to have the locks on his property re-keyed at a cost of \$215.00. This would not have happened if the claimant had returned his keys. The employer also charged the claimant for the cost of placing a stop on the check. The bank cost was for \$58.00.

The employer testified that the claimant went onto his property and removed his individual tools and also took some tools belonging to the employer. The employer feels that the claimant did not have an intention of returning to work and so the employer had to take measures to ensure he got his expenses back.

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.

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 prevail in the fact that there are some wages owed.

Any loans from the claimant to the employer are issues between the parties and not part of a Wage Claim. It appears that the claimant was paid for all wages until the last check was stopped by the employer.

The last check was stopped because the employer felt the claimant owed him for a tool bill he paid. He also feels that the claimant owes the cost of the re-keying of the business. The final cost was for the payment to the bank to stop payment on the check. The total of these expenses comes to \$500.00, the amount of the last payment of wages.

The law is strict on when and how deductions can be made from wages. In regards to the issues in the last wage check the employer would need an authorization from the claimant to make wage deductions. No such document was presented for the hearing.

The employer paid a bill for the claimant and that money is owed but cannot be reclaimed through the Wage Claim process. The cost of the stopped check and the re-keying of the property is a "cost of doing business" and not a wage deduction situation.

It is found that all wages have been paid except for the wages in the last check. The Wage Claim is valid in the amount of \$500.00.

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 by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$500.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$500.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 27, 2017
Original: Claimant
cc: Employer
TFH/das