

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

RJH Builders LLC

DECISION OF THE HEARING OFFICER

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

Employer: RJH Builders LLC, 44 Carter Hill Rd, Concord, NH 03303

Date of Hearing: January 3, 2017

Case No.: 54256

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$270.00 in unpaid overtime wages for thirteen hours worked on September 24, 2016. He initially claimed September 23, 2016, as the date he worked, but after reviewing a 2016 calendar changed the date to September 24, 2016. He claims he worked forty hours for the week and additional thirteen hours for which he should receive overtime pay. He further seeks liquidated damages.

The employer denies the claimant was not paid for all time worked. He asserts that all hours are reviewed with employees on Monday prior to calling in payroll for processing.

FINDINGS OF FACT

The claimant worked for the employer from August 2016 through September 24, 2016.

The claimant argues he worked thirteen hours on September 24, 2016, after working forty hours in the same pay week. He argues the employer initially agreed he was due the wages but then did not send the payment as promised.

The employer disagrees that the claimant worked overtime the week of September 24, 2016. He believes the claimant did not work over forty hours total for the week.

Neither party presented any documentation showing the hours worked or hours paid for the week ending September 24, 2016.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show

by a preponderance of the evidence that he was not paid for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden of proof as his story is only as credible as, not more credible than, the employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed the claimed wages.

Because no wages are found to be owed, no liquidated damages can be awarded.

However, even if wages had been found to be due, the claimant failed to prove by a preponderance of the evidence liquidated damages were due.

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" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The employer provided credible testimony that he does not believe the claimant is due any further wages.

The Hearing Officer would have found that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due in the time required because the employer had a genuine belief that the wages were not owed.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee and RSA 279:21 VIII requires an employer to pay time and one half of an employee's regular rate of pay for all time worked in excess of forty hours, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed unpaid wages and overtime wages, it is hereby ruled that the Wage Claim is invalid.

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.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 5, 2017

Original: Claimant
cc: Employer
MJD/das