

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Lou's Restaurant & Bakery

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I/II illegal deduction

Employer: Lou's Restaurant & Bakery, 30 S Main St, Hanover, NH 03755

Date of Hearing: January 19, 2017

Case No.: 54340

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$3,678.00 in unpaid wages because the employer agreed to pay her the value of health benefits she did not utilize through the employer.

The employer denies there was any agreement to pay her the value of the health benefits she did not use because she was covered under another plan.

FINDINGS OF FACT

The claimant worked for the employer from May 3, 2016 through October 28, 2016.

The claimant argues she had a meeting with Mr. Toby Fried, one of the owners, on May 19, 2016, regarding her wages and benefits. She argues he agreed to pay her the value of the health benefits she did not utilize through employer, as wages.

The employer agrees there were many conversations about wages; however, there was no agreement to pay her the value of the health benefits she did not take. The claimant did not have the experience needed for the position, but the employer felt with the proper mentorship, she would work out well. Unfortunately, she did not progress in the manner the employer had hoped. There were discussions that if she met certain criteria, they would discuss increasing wages. As those benchmarks were not met, the employer did not increase her wages.

No written agreement exists for the claimant to receive the value of the medical benefits she did not utilize through the employer. The parties disagree as to the verbal conversations regarding any changes in wages.

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 she did not receive all wages due. The Hearing Officer finds that the claimant failed to meet that burden of proof as her 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 she is owed the claimed wages.

DECISION

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 Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 27, 2017

Original: Claimant
cc: Employer

MJD/das