

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

PLAISTOW POWER SPORTS

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Plaistow Power Sports, 107 Plaistow Road, Plaistow, NH 03865

Date of Hearing: February 14, 2017

Case No.: 54436

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 13, 2016. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on January 25, 2017.

The claimant testified that he worked for the employer for four months. He stated that he was an hourly employee at a rate of \$11.00 per hour. The claimant testified that he was due \$275.00 for twenty-five hours of work.

The claimant testified that he recorded his time on a punch in system. He stated that he was paid weekly and that the work week was Thursday to Wednesday. He was not scheduled to work on Sunday or Monday. On Tuesday, November 15, 2016, the claimant testified that he was terminated from his job.

The employer testified that the claimant worked for several weeks not four months. The pay period was Sunday to Saturday and the employee was paid on the following Thursday. All wages were current; there was no hold back at the start of employment. The employer testified that the claimant had been paid for all hours worked except for three-fourths of an hour that was due for the day of termination.

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 claimant was not paid all wages due. The claimant has the burden to show that there are wages due and owing and he met this burden.

The employer was credible in the amount of time the claimant worked for them and in the record of work time and time paid. The problem resulted when the claimant was terminated on his last day of work and the employer did not pay him for that day.

The employer said that they owed the claimant 0.75 hours of wages for that day. In fact, because the claimant reported to work at the employer's request, he is due a minimum of two hours of wages for that day.

The Wage Claim is valid for two hours of work on the last day. This amounts to \$22.00. All other wages have been paid.

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 \$22.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$22.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 7, 2017

Original: Claimant

cc: Employer

TFH/das