

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**BGE Delivery Services Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43-b unpaid salary

**Employer:** BGE Delivery Services Inc, 4 Molter St, Cranston, RI 02910

**Date of Hearing:** February 27, 2017

**Case No.:** 54558

**BACKGROUND AND STATEMENT OF THE ISSUES**

This hearing was consolidated with another wage claim hearing against the same employer. Separate decisions have been issued for these hearings.

The claimant originally asserted, through the filing of his wage claim, that he was owed \$750.00 in unpaid salary for the pay period of December 31, 2016 through January 6, 2017. At the hearing, he amended the claim to \$700.90 as he received \$49.10 on January 6, 2017.

The employer denies the claimant was not paid for all time worked. He asserts the claimant was not paid a weekly salary, but rather a daily salary of \$150.00. He also received \$49.10 for showing upon January 4, 2017, as the claimant told him he was advised by the New Hampshire Department of Labor he was required to pay a four hour minimum for appearing for work.

**FINDINGS OF FACT**

The claimant worked for the employer from March 2016 to April 2016 for a salaried rate of \$750.00. When he returned to employment, he received a text message which stated he would receive \$150.00 per day.

The claimant argues he did not receive his full salary for the pay period December 31, 2016 through January 6, 2017. The claimant worked on December 31, 2016 and January 4, 2017 only during that pay period. The employer paid \$49.10, gross, for four hours of "show up" pay on January 4, 2017. He argues he is due the weekly salary balance of \$700.90.

The employer argues that he had texted the claimant the notification that he was to receive a daily rate of \$150.00 for each day he performed work, not a weekly salary. The employer argues that the claimant received \$750.00 for the pay period of December 24, 2016 through December 30, 2016, which represents five days of work at \$150.00 per day. The claimant worked December 24, 28, 29 and 30 during that pay period. The claimant also worked December 31, 2016. The employer did not know if he would be returning, so he included the December 31, 2016, daily payment with the pay period ending December 30, 2016, payment, on January 6, 2017. He also paid the claimant an additional \$49.10 as the claimant appeared for work on January 4, 2017, when he terminated the claimant.

RSA 275:49 I requires that an employer inform employees of the rate of pay at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly noticed the claimant that his wages would be paid at a daily rate of \$150.00, via text message. Any previous arrangement became null and void at the time of that notification.

The employer provided credible testimony that the claimant worked December 24, 28, 29 and 30, for the pay period of December 24 through December 30, 2016, and December 31, 2016, which was in the following pay period, and the employer paid the \$150.00 rate for all five days in the January 6, 2017, pay check. The pay stub does not accurately reflect the days worked for this payment.

The employer paid the claimant \$49.10, as the claimant told him the New Hampshire Department of Labor advised him he was required to pay four hours for appearing for work.

The claimant's argument that his initial employment paid a weekly salary of \$750.00 is not found relevant or persuasive, as the employer notified the claimant via text that he would receive a daily rate of \$150.00.

As the claimant received a \$150.00 daily rate, it is found that he is due that amount for appearing and performing work on January 4, 2017. He received a payment of \$49.10; therefore, he is due the balance of \$100.90 for the daily rate for January 4, 2017.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the balance of the claimed salary.

### **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 Department finds that the claimant proved by a preponderance of the evidence that he is owed a portion of the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$100.90.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$100.90, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: March 16, 2017

Original: Claimant  
cc: Employer

MJD/das