

**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.:** 54559

**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 her wage claim, that she was owed \$750.00 in unpaid salary for the pay period of December 31, 2016 through January 6, 2017. At the hearing, she amended the claim as she received \$45.83 on January 6, 2017. She also received \$0.85 per stop with over 65 stops per day, which made her regular checks between \$750 and \$800 per week, though her daily rate was \$125.00.

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 \$125.00. She also received \$45.83 for showing upon January 4, 2017, as the claimant told him she 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 agreed she discussed a rate of \$125.00 per day with the employer, but felt like it was weekly salary of \$625.00. She knew that if she did not work on a particular day she would not be paid, but she never missed a day. She also received \$0.85 per stop over 65 stops per day, which made her regular checks between \$750 and \$800 per week.

The claimant argues she did not receive her 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 \$45.83,

gross, for four hours of "show up" pay on January 4, 2017. She argues she is due the weekly salary balance of \$750.00, less the \$45.83 paid.

The employer argues that he had a conversation with the claimant that she was to receive a daily rate of \$125.00 for each day she performed work, not a weekly salary. The employer argues that the claimant received \$625.00 for the daily rate for the pay period of December 24, 2016 through December 30, 2016, which represents five days of work at \$125.00 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 she 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 \$45.83 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 did not properly notice the claimant that her wages would be paid at a daily rate of \$125.00 in writing, however, the parties agree that they had a verbal conversation that she would receive \$125.00 per day.

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 \$125.00 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 \$45.83, as the claimant told him the New Hampshire Department of Labor advised her he was required to pay four hours for appearing for work.

The claimant's argument that though they discussed a daily rate of \$125.00 she felt it was a weekly salary, is not found persuasive.

As the claimant received a \$125.00 daily rate, it is found that she is due that amount for appearing and performing work on January 4, 2017. She received a payment of \$45.83; therefore, she is due the balance of \$79.17 for the daily rate for January 4, 2017.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she 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 she is owed a portion of the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$79.17.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$79.17, 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