

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Kleen Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 279:21 VIII unpaid overtime pay.

Employer: Kleen Inc, 1 Foundry St, Lebanon NH 03766

Date of Hearing: March 14, 2017

Case No.: 54641

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,811.65 in unpaid wages and overtime wages because the employer did not properly pay a retroactive raise he received.

The employer denies the claimant was not paid according to the retroactive raise for which they noticed the claimant.

FINDINGS OF FACT

The claimant worked for the employer from October 2014 through June 24, 2016, when the employer terminated his employment.

The claimant argues he did not receive his promised 90 day review which was due in January 2015, until January 2016. At that review, he received a raise of \$1.25. He asked for the raise to be retroactive to January 2015, when he should have had his 90 day review. He only received a retroactive raise of \$0.25 back to January 2015. He seeks the balance of the \$1.00 per hour raise retroactively to January 2015.

He further alleges that the notation on the December 28, 2015, PAYROLL CHANGE NOTICE showing ".25 90 DAY and 1.00 12/28" was added in after he signed the form. He alleges this is not Chuck's (Chuck Hillam, the manager who also signed the PAYROLL CHANGE FORM) signature. He finds this whole thing "disgusting" and is "personally insulted" that the employer would let this case go to a hearing instead of paying the wages.

The employer argues that the claimant received a raise of \$1.25 going forward, as noticed by the PAYROLL CHANGE FORM, however, the retroactive raise was only given as \$0.25. Mr. Wagar credibly testified that it was his handwriting on the PAYROLL

CHANGE NOTICE showing “.25 90 DAY and 1.00 12/28” which was added in after the claimant signed the form. However, he did so for delineation purposes, not to subvert anyone. Mr. Wagar admitted he was not present for the meeting between Chuck Hillam and the claimant, but he had spoken with Mr. Hillam following the meeting, when he made the notations on the form.

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 notified the claimant of his change in pay beginning December 28, 2015. The claimant requested that his raise be applied retroactively to January 2015, when he should have received his 90 day review. The employer credibly testified they agreed to pay the claimant a retroactive raise of \$0.25 back to January 2015, which they did and the claimant received payment. He would have received a \$0.25 raise in January 2015, therefore they applied this amount retroactively. He received an additional \$1.00 per hour in December 2015 as a merit raise going forward.

The employer did not notice the claimant that the \$1.25 raise he received prospectively would be applied retroactively, either verbally or in writing.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the claimed retroactive raise.

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 he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: March 24, 2017

Original: Claimant
cc: Employer

MJD/das