

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Great Horizons Property Management & Landscaping LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: Great Horizons Property Management & Landscaping LLC, 324 Rte 125,
Brentwood, NH 03833

Date of Hearing: April 12, 2017

Case No.: 54841

BACKGROUND AND STATEMENT OF THE ISSUES

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

The claimant asserts he is owed \$70 in unpaid wages for hours worked February 12, 2017. He alleges the employer promised to pay \$20 per hour for clearing the snow, but only paid \$10 per hour as he left after seven hours of work. He seeks the \$10 per hour for seven hours, or \$70, and liquidated damages.

The employer denies the claimant is due any further wages. She agreed to pay \$20 per hour for the duration of the storm. Because he left early and did not complete the storm, she paid only \$10 per hour. She does not think a finding of liquidated damages is appropriate because he did not hold up his end of the bargain by completing the storm.

FINDINGS OF FACT

The claimant and the employer had an agreement for \$20 per hour to clear snow for the storm on February 12, 2017. Both parties expected that the storm would last all night.

The parties agree the claimant worked from 6:00pm on February 12, 2017, through 1:00am on February 13, 2017, or seven hours.

The claimant argues he received only \$10 per hour, rather than the agreed upon \$20 per hour. He seeks the balance as due.

The employer agrees the original arrangement called for a payment of \$20 per hour, however, because the claimant left early and did not complete the storm, she chose to pay \$10 per hour.

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 notified the claimant of \$20 per hour for work clearing snow.

The employer is prohibited from changing this rate after the work has been performed by RSA 275:49.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages in the amount of \$70.

He seeks liquidated damages as due.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The employer agreed she was aware of the wages due and chose not to pay the wages. She did not present any argument that she did not have the financial ability to pay the wages due.

The Hearing Officer finds the claimant proved by a preponderance of the evidence that the employer voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed, failed to pay the wages due.

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 the claimed wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$70.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant proved by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is valid in the amount of \$70 (\$70 x 10% x 10 days).

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$140 (\$70 + \$70), less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 13, 2017

Original: Claimant
cc: Employer

MJD/das