

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Salon 25 LLC

DECISION OF THE HEARING OFFICER

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

Employer: Salon 25 LLC, 142 Lowell Rd #13, Hudson, NH 03051

Date of Hearing: May 8, 2107

Case No.: 54946

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$105 in unpaid wages for 4 hours worked on October 24, 2016 and 6.5 hours worked on March 6, 2017, at \$10 per hour. She alleges these were classes for hair product sessions which the employer mandated that she attend. She also asserts she was owed 5.36 hours of regular pay at \$10 per hour and received only 4 hours of pay. She seeks the balance as due. She also seeks liquidated damages.

The employer denies either the October 24, 2016 or March 6, 2017, training classes were mandatory. She denies the claimant is due any further wages.

FINDINGS OF FACT

The claimant worked for the employer as a stylist. The employer terminated the claimant on March 6, 2017, after calling her in to report to work.

The claimant tells a passionate story that she attended two mandatory classes for the benefit of the employer on October 24, 2016 and March 6, 2017.

The employer denies the classes were mandatory, instead arguing that the claimant asked to attend one of the classes on her own.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that the classes were mandatory and that she was not paid for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden of proof as her story is only as credible as, not more credible than, the

employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that she is owed the claimed wages.

Because no wages are found to be owed, no liquidated damages can be awarded on this portion of the wage claim.

The claimant argues the employer did not pay her the remainder of the hours owed for week ending March 18, 2017, the week in which she was terminated.

The claimant had worked 3.36 hours for the week prior to being called in to work on March 16, 2017, at which time the employer terminated her employment. The claimant asserts she is due two hours of pay for reporting to work.

RSA 275:43-a Required Pay. – On any day an employee reports to work at an employer's request, he shall be paid not less than 2 hours' pay at his regular rate of pay; provided, however, that this section shall not apply to employers of counties or municipalities, and provided further that no employer who makes a good faith effort to notify an employee not to report to work shall be liable to pay wages under this section. However, if the employee reports to work after the employer's attempt to notify him has been unsuccessful or if the employer is prevented from making notification for any reason, the employee shall perform whatever duties are assigned by the employer at the time the employee reports to work.

Lab 803.03 Notification and Records.

(h) Employees who report to work and then request to leave on the basis of illness, personal or family emergency shall be exempt from RSA 275:43-a providing that a written explanation, initialed by the employee is entered on the employee's time slip or card.

The Hearing Officer finds the claimant is due two hours of wages for reporting to work at the employer's request on March 16, 2017, at which time she was terminated. Her total payable hours for the week would be 5.36 hours. The employer paid her for 4 hours, leaving a balance of 1.36 hours.

The Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed 1.36 hours at \$10 per hour, or \$13.60.

The claimant seeks liquidated damages on these wages.

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 credibly testified she believed she had paid all wages due as she paid the claimant 4 hours, instead of the 3.36 hours she had worked during the week.

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due in the time required because the employer had a genuine belief that the wages were not owed.

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 \$13.60.

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 failed to prove 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 invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$13.60, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 24, 2017

Original: Claimant
cc: Employer

MJD/das