

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Advanced Security Systems Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Advanced Security Systems Inc, 95 Plaistow Rd, Plaistow, NH 03865

Date of Hearing: May 9, 2107

Case No.: 54954

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$88 in unpaid wages for eight hours worked between 12:00am and 8:00am on February 10, 2017. He agreed he was sleeping for three hours during this shift and had agreed with the employer to receive pay for only the five hours of work for which he was awake during his shift. Because the employer refused to make any payments, he filed this claim.

The employer denies the claimant is due any wages because the written policy clearly states they will not pay for shifts when an employee falls asleep.

FINDINGS OF FACT

The claimant performed work for the employer on February 10, 2017, between the hours of 12:00am and 8:00am. The claimant admits he “dozed” between 3:00am and 6:00am. The employer refused to pay the claimant for any of these hours. He earned a rate of \$11 per hour.

The claimant provided credible testimony that he “dozed” only between the hours of 3:00am and 6:00am. He had not been feeling well and set his alarm for 6:00am. He normally did not work third shift but had been called to fill in this shift. He only agreed to work the shift because he was the last person on the list to call and felt he had to agree.

The employer argues their written policy clearly states employees will not be paid for shift during which an employee falls asleep. They are unable to determine actual hours worked and it creates a danger to their clients.

RSA 275:43 I requires every employer to pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, on regular paydays designated in advance by the employer and at no cost to the employee.

Lab 803.01 Payment of Wages-

(f) Every employer shall pay without condition and within the time set forth in Lab 803.01 (a), and (e) all wages or parts thereof conceded by him or her to be due.

The Hearing Officer finds the claimant proved by a preponderance of the evidence he worked at least five hours and did not receive any pay for this time. This claim is found to be valid in the amount of \$55 (5 hours * \$11 per hour).

DISCUSSION

The burden of proof lies with the claimant in these matters. The claimant has the burden to prove by a preponderance of the evidence that the claimed wages are due. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant met this burden.

The employer made vexatious statements in their objection to this claim:

"We will also hold the Department of Labor responsible for this frivolous claim." and "Lastly, the Department of Labor should not encourage employees to file ridiculous claims."

The employer should note that the Department does not encourage or discourage any claimant from filing a claim. This Department is simply a venue for a claimant to utilize the process set forth by the Legislature of the State of New Hampshire in RSA 275:51 V, should one feel wages are due.

Each wage claim is judged on the merits of the case, after a hearing has been held, as to whether they are valid or invalid.

These statements have no bearing on the merits of this case.

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 \$55.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$55, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 25, 2017

Original: Claimant
cc: Employer

MJD/das