

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Gabriel Business Group LLC dba Aldine Interior Solutions

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Gabriel Business Group LLC dba Aldine Interior Solutions, 105 Rte 101A
Ste 9, Amherst, NH 03031

Date of Hearing: June 5, 2017

Case No.: 54973

BACKGROUND AND STATEMENT OF THE ISSUES

This hearing was consolidated with another claimant against the same employer. Separate decisions have been issued for these cases.

The claimant asserts he is owed \$964 in unpaid wages for hours worked and travel time between November, 2016 and February 2017.

The employer denies the claimant was not paid for all time worked.

FINDINGS OF FACT

The claimant worked for the employer beginning October 2016, under the table, and then became an employee November 2016 and February 2017. He earned an initial hourly rate of \$12 until January 2017, when his hourly rate increased to \$14 per hour.

The claimant argues he regularly did not receive correct payment for time worked and travel time from the employer. He alleges he had the use of company vehicle and was required to pick up various employees in and around Manchester, NH. He argues he was told to punch in and out at the job site only.

He is not claiming hours for time worked or travel time each day of his employment, only on days that he performed work and did not receive payment for the work or the associated travel time. He acknowledges there were days he did no work at the warehouse or otherwise prior to arriving at the job site. He does not seek compensation for days on which he simply drove himself to and from the job site.

The claimant presented a spreadsheet based on contemporaneous punch in and out times he provided to the employer via text message, previously submitted, which include the dates and hours for which he is seeking payment.

The employer argues the claimant did not punch in and out for the time worked. She questioned the length of time it took the claimant to raise the issue of not being paid for all time worked.

Pursuant to Lab 803.04 Hours Worked. For the purpose of determining "all wages due" for hours worked in accordance with RSA 275:43, I, the department of labor, under the authority provided by RSA 275:54, incorporates the "Wage and Hour Publication 1312, Title 29 Part 785 of the Code of Federal Regulations, United States Department of Labor", reprinted May 2011 as specified in Appendix II.

§ 785.38 Travel that is all in the day's work.

Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked. (*Walling v. Mid-Continent Pipe Line Co.*, 143 F. 2d 308 (C. A. 10, 1944)).

The claimant provided credible testimony and evidence that he did perform work driving employees at the request of the employer and was not compensated for this time or the associated required travel time.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages in the amount of \$964.

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.

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 the Wage Claim is valid in the amount of \$964.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$964, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 7, 2017

Original: Claimant
cc: Employer

MJD/das