

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**Mark Duggan dba The Burger Mill**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Mark Duggan dba The Burger Mill, 278 NH Rte 101, Amherst, NH 03101

**Date of Hearing:** July 11, 2017

**Case No.:** 55249

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$1,015.50 in unpaid wages for hours worked between April 13 and April 28, 2017. He states the employer never paid any wages after taking over from the previous owner and promising him \$1.00 per hour more than he was already earning. He further seeks liquidated damages.

The employer denies the claimant is due the wages he is claiming and the dates he claims he worked. He agrees the claimant is due \$614.46, at \$7.25 per straight time hours and the appropriate overtime rate for hours worked over forty hours, for hours worked between April 15 and April 28, 2017. However, they are unable to issue a check because the claimant refuses to complete a W-4 form and provide his Child Support order so that they may make the appropriate deductions.

**FINDINGS OF FACT**

The claimant argues he is due \$1,015.50 in unpaid wages for hours worked for the employer from April 13, 2017 through April 28, 2017, when he quit. He agrees his last shift worked was April 27, 2017. He also argues he was earning \$12.00 per hour, as he alleges the employer offered \$1.00 more per hour than he was earning with the prior employer.

The employer argues the claimant only worked shifts between April 15, 2017 and April 27, 2017, and agrees he is due \$333.48 for April 23, 2017 and \$280.93 for April 28, 2017, at \$7.25 per hour. These wages have not been paid as the claimant refuses to complete a W-4 form for the IRS and to provide documentation for his court ordered child support. He further argues any hours worked prior to April 15, 2017, were the responsibility of the prior owner.

The claimant did complete the requested W-4 after the conclusion of the hearing.

The claimant argues he worked for the employer on April 13 and 14, 2017, prior to the employer taking over the lease on April 15, 2017. He did not produce any documentation, only his testimony that he worked the hours on these dates.

The employer argues the claimant's work for this employer did not begin until April 15, 2017, and that any work performed prior to that day is the responsibility of the prior employer.

The employer provided time cards, previously submitted, for the weeks claimed which show 45.75 hours worked week ending April 23, 2017 and 40.25 hours worked week ending April 28, 2017.

The Hearing Officer finds the claimant did not prove by a preponderance of the evidence he worked for this employer on April 13 and 14, 2017. He did prove he worked for the employer between April 15 and April 27, 2017.

The parties disagree as to the claimant's hourly wage. The claimant argues the employer offered him \$12.00 per hour and the employer argues the claimant was offered minimum wage.

The employer did not notify the claimant of his rate of pay as required by RSA 275:49 and Lab 803.03. Further, there was no "meeting of the minds" between the parties for a rate of pay. Therefore, the claimant is entitled to minimum wage for all hours worked, pursuant to RSA 279:21.

The Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the following wages:

- April 15 through April 23, 2017      45.75 hours    \$352.53
- April 24 through April 28, 2017      40.25 hours    \$292.72

The claimant further alleges he is due liquidated damages for the employer's failure to pay his wages as designated by statute.

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 provided credible testimony that they believed they could not issue checks to the claimant without the proper IRS form W-4 and the claimant's court ordered child support order, both of which the claimant refused to provide.

The claimant provided some reasoning that the current employer should have been able to procure these documents from the prior employer, however, this argument is not found persuasive.

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 they could not legally issue wages without the requested documentation.

### **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 wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$645.25 (\$352.53 + \$292.72).

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 \$645.25, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: August 2, 2017

Original:        Claimant  
cc:                Employer

MJD/das