

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Armand E Lemire Co Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses
RSA 275:48 I/II illegal deductions
RSA 275:44 IV liquidated damages
Interest

Employer: Armand E Lemire Co Inc, 7 Dartmouth St, Hooksett, NH 03106

Date of Hearing: August 1, 2017

Case No.: 55252

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$756 as the employer withheld his final paycheck because he did not return equipment.

At the hearing, the claimant amended the amount due to \$241.56.

The employer denies the claimant is due any further wages. He was told to return the equipment to the employer. Instead, he claims to have locked the equipment in a box which the employer was renting, and the equipment is not able to be located.

FINDINGS OF FACT

The claimant worked for the employer from November 2013 through May 5, 2017, when he quit.

The claimant argues he locked the equipment, which the employer had provided to him, in the employer's box at the jobsite and the employer is now charging him for the full cost of the equipment, in the amount of \$241.56.

The employer argues the claimant did not return the equipment personally and now is not able to be located as the storage area in which he locked it was rented.

RSA 275:48 Withholding of Wages I (b) allows an employer to make certain deductions from an employee's wages under this statute. However, none of the exceptions under this statute apply to this case.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed illegal deductions in the amount of \$241.56.

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 claimant admitted the employer thought it was allowable to hold his wages for the return of the equipment.

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 he could hold the wages for the return of the equipment.

The claimant requested statutory interest on this claim. Pursuant to RSA 524:1-b statutory interest is calculated from the date of writ, or the filing of the petition, in this case May 23, 2017, to the date of judgment, or August 3, 2017, on the judgment of \$241.56. The claimant is awarded \$1.16 in statutory interest, based on the 2017 interest rate of 2.4%, as determined by the State Treasurer.

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 RSA 275:48 I allows an employer make certain deductions from wages due an employee, and as this Department finds that the deductions are not authorized by statute, it is hereby ruled that the Wage Claim is valid in the amount of \$241.56.

As RSA 524:1-b allows statutory interest to be assessed from the date of writ, or the filing of the petition, in this case May 23, 2017, to the date of judgment, or August 4, 2017, the claimant is awarded \$1.16 in statutory interest.

The employer is hereby ordered to send a check to this Department, payable to Corey Schueler, in the total of \$242.72 (\$241.56 + \$1.16), less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 4, 2017

Original: Claimant
cc: Employer

MJD/das