

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Rossview Farm LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Rossview Farm LLC, 85 District 5 Rd, Concord, NH 03301

Date of Hearing: August 24, 2017

Case No.: 55482

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserted, through the filing of her wage claim, that she was owed \$416.46 in unpaid wages for hours worked from June 23 through June 29, 2017, her final week of work.

Rossview Farms LLC argues that the claimant is responsible for missing money from the register and the cash box, which is greater than any wages she may be owed. Further, he has fewer than five workers on his farm.

FINDINGS OF FACT

Rossview Farms LLC argues they have fewer than five employees.

This Department must first determine whether the claimant was an employee of an employer.

RSA 275:42 I defines "employer" as, includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person, except employers of domestic labor in the home of the employer, or farm labor where less than 5 persons are employed.

RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement

for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

Lab 802.06 "Farm labor" as used in RSA 279:21, I and RSA 275:42, I means all work performed in agriculture including cultivation and tillage of the soil, dairying, growing and harvesting of any agriculture or horticultural commodities, the raising of livestock, bees, fur bearing animals or poultry and any practices performed by a farmer on a farm. "Farm labor" does not include the retailing of goods other than the products produced by the farm.

There were no arguments that the work performed was not within the scope of farm labor.

The claimant's representative provided a list of workers at the farm, which numbered greater than five. However, no evidence was presented of the timing of the work performed by these individuals.

Mr. Ross provided credible testimony that he did not have five or more workers at any given time.

The Hearing Officer finds the claimant engaged in farm labor as defined under RSA 275:42 I and Lab 802.06. Therefore, the claimant cannot be an employee of an employer as Rossvie Farms LLC is not an employer as defined as employer.

As the claimant is not an employee, wages cannot be awarded.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet her burden in this claim.

DECISION

Based on the testimony and evidence presented, as RSA 275:51 V affords the Wage Claim process to employees of employers only, it is hereby ruled that the Wage Claim is invalid due to a lack of jurisdiction by this Department.

Melissa J. Delorey
Hearing Officer

Date of Decision: September 21, 2017

Original: Claimant
cc: Employer

MJD/nm