STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[redacted]

V

First Class Tire & Automotive Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses
RSA 279:21 VIII unpaid overtime pay

Employer: First Class Tire & Automotive Inc, 320 S Broadway, Lawrence MA 01843

Date of Hearing: August 29, 2017

Case No.: 55514

BACKGROUND AND STATEMENT OF THE ISSUES

This hearing was consolidated with three other claims against the same employer. Separate decisions have been issued for each case.

The claimant originally asserted, through the filing of his wage claim, that he was owed $8,761.78 in unpaid wages including overtime pay, for hours worked between April 17, 2017 and July 14, 2017, and unpaid expenses in the amount of $9,572.75.

At the hearing, the claimant removed the claim for unpaid employee expenses and amended the amount of the unpaid wages to $12,104.90.

Raphael Julio, President of First Class Tire & Automotive Inc, denies he was an employer and that the claimant was an employee. He argues this venture was a partnership, not an employment relationship, and that he did not hire the claimant.

FINDINGS OF FACT

The parties met in the course of the racing circuit. Mr. LaPorte introduced Mr. Julio to the [redacted] and [redacted], to be a potential tire sponsor for a race car, during the winter of 2017. The claimant was present at this meeting. As part of this conversation, Mr. Julio had concerns that they were working on the car outside in such adverse wintery conditions. They discussed obtaining space to work on the race cars.

A local gas station with a garage was available for rent/lease. The proper permits were obtained and they leased the space. Due to issues with their backgrounds, only Mr. Julio's name, First Class Tire & Automotive Inc, is on the lease per the request of the lessor.

Both parties agree that at no time were wages discussed. The agreement regarding any revenue generated that it was to be split after the costs were covered. Mr. Julio simply wanted his seed money to start the operation back, and then any funds left were for [redacted] and [redacted] to keep. The lease agreement provided no rent was due for the first two months of operation. The claimants maintain they were fully booked with work, but were still unable to maintain the financial obligations of rent, utilities, tools purchases, et al, with the revenue generated.

The business operated between April 17, 2017 and July 14, 2017. Mr. Julio was not present on site as he had a full time business elsewhere. Mr. Washburn was the general manager and onsite and he hired the claimant as a mechanic. The claimant alleges he worked May 8, 2017 through July 14, 2017. He did not receive any paychecks.

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

RSA 275:42 Definitions. – Whenever used in this subdivision:
I. The term "employer" 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.
II. "Employee" 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…

In this business operation, the claimant was not a partner in this venture as [redacted] were. [redacted] hired the claimant. The claimant was directed by [redacted], in consideration for direct gain, wages, which he never received.

The question remains, who was the employer of the claimant? First Class Tire & Automotive Inc leased the garage/gas station space. However, [redacted], who is not an employee of First Class Tire & Automotive Inc, hired the claimant directly.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is an employee of an employer. He did not prove he was an employee of First Class Automotive & Tire Inc.

Even if the claimant had proven he was an employee of First Class Tire & Automotive Inc, he would have also retained the burden to prove he was due the claimed wages.

The claimant argued he worked 9.5 hours each day Monday through Friday and 8am to 12pm on Saturday, every week between May 8, 2017 and July 14, 2017, without

exception. He argued he is due $21.72 per hour based on the New Hampshire average for this type of work. He also calculated overtime pay based on the Federal regulations, not RSA 279:21 VIII.

The claimant maintained that he “was busy”.

The claimant’s testimony is not found persuasive or credible that he worked the hours claimed. Further, if any hours had been found to be worked, the only applicable rate of pay awarded could be minimum wage, $7.25, as the parties agree there was no “meeting of the minds” regarding any hourly rate. In fact, there were no discussions as all regarding wages.

Therefore, the Hearing Officer would have found that the claimant failed to prove by a preponderance of the evidence he worked the hours claimed or that he was due the wages claimed.

DECISION

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 failed to prove by a preponderance of the evidence that he was an employee of the stated employer and not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

_____

Melissa J. Delorey
Hearing Officer

Date of Decision: September 22, 2017

Original: Claimant
cc: Employer

MJD/nm