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.: 55516

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 $14,432.07 in unpaid wages including overtime pay, for hours worked between April 17, 2017 and July 14, 2017, and unpaid expenses in the amount of $10,659.08.

At the hearing, the claimant removed the claim for unpaid employee expenses and amended the amount of the unpaid wages to $23,208.35.

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.

FINDINGS OF FACT

The parties met in the course of the racing circuit. Mr. LaPorte introduced Mr. Julio to the claimant and [redacted], to be a potential tire sponsor for a race car, during the winter of 2017. 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 the claimant 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. The claimant was onsite as the "head mechanic/oversaw shop/general manager."

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 an employee of an employer. He was a partner in this venture. Though his name was not on the corporation or the lease of the garage, he nonetheless was a partner. He provided the business knowledge and manual labor to complement Mr. Julio's financing.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is an employee of an employer and due the claimed wages.

Even if the claimant had proven he was an employee, he would have retained the burden to prove he was due the claimed wages.

The claimant argued he worked 5am to 8pm Monday through Friday and 8am to 12pm on Saturday, every week between April 17, 2017 and July 14, 2017, without exception. He argued he is due $18.50 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 he did not charge work on the race cars at all during this period, only customer cars. He first stated all the work on the race cars was completed prior to the shop opening. He then stated that he did not charge Mr. Julio for

any hours worked on the race cars, generally performed on Sundays, after the shop opened.

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 because this was a partnership.

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 275:51 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.

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Melissa J. Delorey
Hearing Officer

Date of Decision: September 22, 2017

Original: Claimant
cc: Employer

MJD/nm