

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

J. M. Carr Landscaping, LLC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: J. M. Carr Landscaping, LLC

Date of Hearing: October 10, 2017

Case No.: 55700

BACKGROUND AND STATEMENT OF THE ISSUES

The current issues concern whether the claimant is due the difference in pay rate for hours worked because the employer failed to notify the claimant in writing that his rate of pay was to change.

The claimant asserts that he was only told of the forthcoming reduction in his hourly rate of pay verbally, not in writing as he should have been, and that he is therefore owed the difference between his previous hourly rate and the new hourly rate for hours worked. The claimant calculates he is owed \$622.13.

The employer argues he notified the claimant verbally prior to the change in his pay rate and therefore he owes the claimant no additional wages.

As a basis of the claimant's assertion he is owed the difference in pay rate he filed a Wage Claim with this Department on August 4, 2017. A Notice of Wage Claim was sent to the employer on August 4, 2017. The employer's objection to the claim was received on August 15, 2017. The claimant's request for a hearing was received on September 12, 2017. A Notice of Hearing was sent to both parties on September 20, 2017 and accordingly a hearing was held on October 10, 2017.

FINDINGS OF FACT

The claimant worked for the employer from April 27, 2017 until he quit on July 14, 2017. His starting rate of pay was \$15.00 per hour then decreased to \$12.00 an hour beginning the pay week of May 22, 2017.

The employer credibly testified that he had counseled the claimant on a number of occasions regarding his work performance. Further, the employer credibly testified that because there was no improvement in the claimant's work, he met with him on May 19, 2017 and verbally notified the claimant that his rate of pay would be decreased beginning the following week.

The claimant submitted, by way of his wage claim, the employer had promised to cut him a check after the claimant had informed him that a written notice of change in pay was required before a change was made to an employee's rate of pay. At the hearing the claimant withdrew the written statement that the employer had said he would cut him a check, stating it was written in error.

After learning that written notification was required before changing an employee's rate of pay, the employer provided the claimant notification on June 23, 2017.

DISCUSSION AND CONCLUSIONS

RSA 275:49 requires an employer to inform employees of the rate of pay at the time of hire, and prior to any changes. It reads in relevant part:

Every employer shall:

- I. Notify the employees, at the time of hiring of the rate of pay, and of the day and place of payment;
- II. Notify his or her employees of any changes in the arrangements specified above prior to the time of such changes;

Lab 803.03 (a) clarifies the notice to be in writing.

The claimant bases his claim on the employer not informing him of the reduction in his rate of pay in writing.

The claimant acknowledges the employer verbally informed him of the reduction in his rate of pay. When the Hearing Officer asked the claimant when he understood the change was to take place, the claimant responded by saying

he understood the change was to take place the week following the employer's verbal notice.

Furthermore, the claimant's pay stub for the pay period May 22, 2017 through May 28, 2017 clearly shows the change in pay rate to \$12.00 per hour. The Hearing Officer finds the pay stub to be de facto compliance with the requirements of Lab 803.03 (a).

The Hearing Officer finds that the employer was not in compliance with the requirements of RSA 275:49 when he did not inform the claimant, in writing, of the reduction in his rate of pay.

However, the Hearing Officer also finds that this does not automatically guarantee the claimant the hourly difference in his rate of pay. There are two issues, all wages due and the proper notification of a change in pay. It is clear that the employer verbally notified the claimant of the impending change in pay in advance, and it's clear the claimant knew in advance of the impending change and what that change was going to be and the claimant testified to the Hearing Officer he knew that his hourly rate was being reduced to \$12.00 per hour a week prior to the change. For the claimant to argue he is due additional wages in this situation because the notice was not written is not persuasive. The claimant, therefore, fails to prove by a preponderance of the evidence that he is due additional wages.

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 the claimant failed to prove by a preponderance of the evidence that he is due additional wages, it is hereby ruled that the Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

Date of Decision: November 9, 2017

Original: Claimant

cc: J. M. Carr Landscaping, LLC., 275 Clough Hill Road, Loudon, NH 03307

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