

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

LightSpeed Towing, LLP

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal deduction from wages

Employer: LightSpeed Towing, LLP, 76 Valley Hill Road, Pelham, NH 03076

Date of Hearing: October 3, 2017

Case No.: 55728

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the legitimacy of an employer's withholdings from a claimant's wages for a uniform cleaning service.

The employer provides towing services, roadside assistance and repossession services. Some four (4) years ago, and prior to the claimant's hiring, employees requested the employer arrange for a laundry service which would provide and launder their work uniforms. The service was arranged and involves laundering and repair or replacement of damaged uniforms. The uniforms come affixed with a company logo.

The claimant puts forth three reasons the withholding was improper under relevant statute.

1. The claimant alleges the uniform cleaning service was mandated by the employer and insists he told the employer many times he did not want to use the service.
2. The claimant reported he used the service just once preferring to avoid the "hassle" of the laundry service by laundering his uniforms at home. Therefore he should not have to pay for a service he did not use.
3. The claimant asserts the garments were a "uniform" as defined by NH Labor Law because they were affixed with a company logo. As such the withholding is illegal.

The claimant states he feels as though he was "bamboozled" and is due the \$900.00 withheld from his wages.

The employer holds the uniform service has always been optional, and further, the claimant requested the service evidence by his signed consent. The employer holds the claimant never approached him requesting to cancel the service. The employer asserts he does not owe the claimant \$900.00 in wages.

As a basis of the claimant's assertion he filed a Wage Claim with this Department on August 8, 2017, the employer's objection to the claim was received on August 21, 2017, a Notice of Hearing was sent to both parties on September 13, 2017 and accordingly a hearing was held on October 3, 2017.

FINDINGS OF FACT

The claimant worked for the employer from February 12, 2016 through August 5, 2017. He received \$15.12 per hour and paid weekly. His most recent position was Operations Manager.

At hire the claimant signed a document entitled "Employee Responsibility Form – Uniform Program." The document requests employees acknowledge that uniforms are the property of a third party and in the event of loss the employee would be charged for replacement.

The employer's document entitled "Deduction Authorization," also signed by the claimant at hire, grants the employer permission to withhold \$20.00 from the claimant's weekly pay check for costs associated with the uniform service.

In early, to mid-July, 2017 the claimant received information that clothing with company logos need to be provided by the employer free-of-charge to employees. The claimant shared this information with the employer. The employer reviewed the information and later responded to the claimant saying he was comfortable with the way the service was being implemented and believed he was in compliance with the law. The employer asserts that during this conversation the claimant freely verbalized he had no issue with the way the service was being implemented.

DISCUSSION AND CONCLUSIONS

The definition of "uniform" is set forth in RSA 275:48 V (b); the statute reads: "Uniform means a garment with a company logo or fashion of distinctive design, worn by one or more employees, and serving as a means of identification or distinction."

The parties do not disagree the garment described in the current case is in fact a "uniform" defined in statute. However, the claimant holds that part of what he paid for in the weekly withholding was the cost of the uniform. The employer holds the withholding was for laundering and repair of garments, not the cost of the garment with logo (uniform).

Neither party provided an itemized service invoice. Therefore the Hearing Officer is unable to make a determination as to whether the claimant paid for the uniform as part of a weekly wage withholding or the uniform was his to use free of charge with all costs attributed to the cleaning and replacement in the event of damage.

The parties disagree as to whether or not the conditions set forth in statute were met allowing for the weekly withholding.

Statute allows an employer to withhold wages due an employee only in specific circumstances. RSA 275:48 permits withholding for uniform laundering when the following conditions are met, the statute reads in relevant part:

I. No employer may withhold or divert any portion of an employee's wages unless: (b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) or any of the following: (7) Voluntary cleaning of uniforms and non-required clothing.

The claimant contends the service was mandated and he had no choice whether he used the service or not. During testimony this Hearing Officer asked the claimant directly if he had asked the employer to opt out of the service. The claimant responded: "In a round-about way I asked – It was policy." The Hearing Officer finds this response less than affirmative.

The employer contends that use of the service was optional. During testimony this Hearing Officer asked the employer directly if there were any current employees who work on the road that do not wear uniforms because they choose not to. The employer responded: "The only time employees do not have uniforms or choose not to wear uniforms is when they first start because they are not provided uniforms yet." The Hearing Officer finds this response nebulous.

The Hearing Officer finds the claimant presented evidence which is as credible, but not more credible, than the employer's evidence. The burden of proof lies with the claimant in these matters. The claimant has the burden to prove by a preponderance of the evidence that the claimed wages are due. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds that the claimant failed to meet this burden of proof as his testimony is only as credible as, not more credible than, the employer's. The claimant therefore fails to prove by a preponderance of the evidence that he is owed the claimed 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 was not paid all wages due because the employer made illegal deductions from his weekly wages, it is hereby ruled that the Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

Date of Decision: November 2, 2017

Original: Claimant
cc: LightSpeed Towing, LLP, 76 Valley Hill Road, Pelham, NH 03076

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