

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Three Ball, LLC

The Oaks Golf Links

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Three Ball LLC, Three Oaks Golf Links

Date of Hearing: October 24, 2017

Case No.: 55800

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns a dispute between the parties as to whether the claimant is due unpaid wages based on the employer's promise to increase his wages at a future date.

The employer owns a golf club in Somersworth, NH. The claimant worked there as a golf shop manager, and for one season, as an assistant pro.

The claimant asserts he is owed \$3,000.00 in unpaid wages as a result of a pay raise negotiated with his direct supervisor at hiring. The raise was to take place at a later date. The claimant describes the agreement as verbal, over a handshake and not in writing.

The employer holds there was no prearranged agreement with the claimant for a future pay raise.

On the basis of the claimant's assertion he is owed back wages from the employer, the claimant filed a Wage Claim with this Department on August 18, 2017.

A Notice of Wage Claim was forwarded to the employer on August 21, 2017. The employer's objection was received by the department on September 1, 2017; the objection was forwarded to the employer on the same date. The claimant requested a hearing on September 22, 2017. Notices of hearing were sent to the parties on October 4, 2017 and accordingly a hearing was held on October 24, 2017.

FINDINGS OF FACT

The claimant worked for the employer from September 1, 2015 through November 21, 2016; this time period excludes the business's off-season, generally sometime in October to late March or early April.

The claimant earned \$10.00 per hour as a pro-shop clerk during the autumn 2015 season.

In April, 2016 the claimant began working as the course's assistant golf professional receiving a salary of \$600.00 per week including an opportunity to earn additional money directly from members for providing lessons.

In September 2016 the claimant received a \$50.00 increase in his weekly salary.

On November 11, 2016 the claimant's pay arrangement changed to \$10.00 per hour. On November 21, 2016 the claimant's employment terminated.

On May 31, 2017 the claimant approached the employer seeking the money he submits he is owed as a result of alleged promise the employer made, but never gave him, at the time of his hire on September 1, 2015.

DISCUSSION

The parties agree the claimant sought additional wages throughout the time he worked for the employer.

The claimant holds he negotiated a higher salary in March 2016, alleging the employer promised a \$700.00 per week salary "once things got busy."

The employer holds they never promised a salary increase and submit further that any discussions that occurred with the claimant concerning a requested pay raise would have included the caveat that it would need to be performance based and the business could financially allow it.

The claimant acknowledges there is no written agreement between him and the employer regarding the alleged promised pay raise. Similarly, there was no other physical evidence or witness testimony submitted to support the claimant's allegation the employer promised, but failed, to give him the claimed pay raise.

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional wages. 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.

After considering all the evidence of the parties, the Hearing Officer finds the testimony of the employer persuasive. Even if there may have been informal discussions as to an increase in salary if, and when, business picked up, this informal discussion is not enforceable by this Department. Therefore, the Hearing Officer finds

that the claimant failed to meet this burden. 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 that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

Date of Decision: November 21, 2017

Original: Claimant

cc: Three Ball, LLC dba The Oaks Golf Links, 100 Hideaway Place,
Route 108 Somersworth, NH 03878

DMZ/nm