

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

R. W. Cressy Transport

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: R. W. Cressy Transport

Date of Hearing: October 12, 2017

Case No.: 55894

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the payment of wages due the claimant by the employer.

The claimant drove tractor trailers for the employer who is an interstate freight hauler located in Hopkinton, NH.

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 31, 2017. A Notice of Wage Claim was forwarded to the employer on September 1, 2017. As there was no response from the employer a Notice of Hearing was sent to both parties on September 20, 2017 and accordingly a hearing was held on October 12, 2017.

FINDINGS OF FACT

The claimant worked for the employer from July 2016 through July 2017. The claimant was paid twenty-five percent of the employer's gross receipts for the jobs he worked.

The claimant was paid weekly until the employer began experiencing financial difficulties then the claimant was paid irregularly.

The claimant's weekly pay was contingent upon the employer receiving payment for jobs completed.

The employer is adamant he will not pay wages owed until the claimant turns in three (3) outstanding bills of lading¹ (BoL).

The claimant holds he will not turn in the BoLs until he receives the \$868.75 he feels he is owed.

The employer uses BoLs to calculate employee's wages.

DISCUSSION AND CONCLUSIONS

The employer submits to owing the claimant \$318.75 of the claimed total \$868.75. The employer is firm that he will not give the claimant those wages, or any further wages, until the claimant gives him three outstanding BoLs.

The \$318.75 was calculated using previous BoLs submitted by the claimant. The claimant submits the balance of the claim (\$550.00) is what he is owed for three jobs, the same three jobs he holds BoLs for, that he will not turn in to the employer until he is paid all the wages he feels he is due.

RSA 275:43 requires every employer to pay all wages due to employees, on regular paydays designated in advance by the employer and at no cost to the employee.

The Hearing Officer finds the employer failed to pay the claimant wages due in the amount \$318.75 as required by statute, therefore the Hearing Officer finds the claimant proved by a preponderance of evidence he is due \$318.75 from the employer.

Support for the claimant being due the balance of the claim (\$550.00) is derived from a third party conversation the claimant allegedly had with the customer related to the outstanding three (3) BoLs. The claimant failed to provide any documentation as to how he arrived at the \$550.00. Therefore the Hearing Officer finds the claimant failed to prove by a preponderance of evidence he is due the additional \$550.00.

DECISION and ORDER

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 proved by a preponderance of evidence he is due \$318.75, it is hereby ruled this portion of the Wage Claim is valid.

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 the additional \$550.00 it is hereby ruled that this portion of the Wage Claim is invalid.

¹ A "Bill of Lading" is a document issued by a carrier to acknowledge receipt of goods, describe the terms of the contract and, but not limited to, serve as a document of title to the goods.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total amount of \$318.75 less any applicable taxes, within 20 days of the date of this Order.

David M. Zygmunt
Hearing Officer

Date of Decision: November 13, 2017

Original: Claimant
cc: R. W Cressy Transport, 169 Bound Tree Road, Hopkinton, NH 03229

DMZ/nm