

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Fox Ridge Reliance Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: Fox Ridge Reliance Inc, 1217 Summer St, Bristol NH 03222

Date of Hearing: October 24, 2017

Case No.: 55980

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$895.50 in unpaid wages for hours worked during her final week. She subsequently sought liquidated damages. She again amended her wage claim to include an additional \$1,070.50 in unpaid wages.

At the hearing, she amended her claim again to \$270.37 for discrepancies, including travel time and Davis-Bacon prevailing wages, between the US DOL Davis-Bacon required time sheets and the hours she documented she had worked and \$807.75 for her final week of work.

The employer denies the claimant is due any wages for discrepancies as the time sheets she used were for the Davis-Bacon wages, and the travel time which she seeks is ordinary home to work travel and not compensable. He agrees she has not received her wages for her final week of work, which has been available since pay day, but she caused damage to one of his vehicles and has not paid the damages which she had agreed to pay. He offered to settle the claim at the hearing for the \$807.75 final check, which the claimant declined.

FINDINGS OF FACT

The claimant worked for the employer as a truck driver until her separation from employment on or about August 27, 2017. Her final day of work was August 24, 2017. The parties disagree as to whether the claimant quit or was terminated.

The claimant argues the time sheet provided by the employer do not match the times she recorded herself for the hours worked. She was unable to articulate individual

times or dates. She did provide hand written calculations for the alleged discrepancies, but they were unclear.

She also claims Davis-Bacon Act wages as due.

The employer argues that the claimant is alleging she is due travel time for hours worked to which she is not entitled as she was given the option to pick up a company vehicle, which did not need to be on the jobsite, to commute to the site, or take her own vehicle.

The claimant's argument she is due hours worked based on the US DOL Davis-Bacon time sheets is not persuasive. She did not present unrefuted documentation to show the hours paid corresponding with the time sheets and notes she presented.

Further, the Davis-Bacon Act is within the US Department of Labor jurisdiction, not the New Hampshire Department of Labor's. The employer paid the proper rate of pay pursuant to the August 9, 2017, offer letter. The claimant may have cause of action in another venue.

Therefore, the Hearing Officer finds the claimant failed to prove she is due the claimed discrepancies in her wages.

The claimant argues she is due her final wages for the hours she provided credible testimony and evidence that she worked, and for which the employer produced a check, in the amount of \$807.75.

The employer agrees the claimant is due the check for the hours worked, but now argues that check overpays the claimant for travel time, which they had originally notified the claimant they would pay in her offer letter, but he now declines to pay.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding fringe benefits. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275:49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer noticed the claimant through her August 9, 2017, offer letter that certain travel time would be paid and the policy regarding these amounts and payments.

The employer may not, after the fact, determine he is not going to pay travel time offered for time already worked. Any changes to fringe benefits must be in writing and effective prospectively.

The employer also argues that the claimant damaged his truck and agreed to pay for the damages. He sent the claimant a text to ask her how she would like to receive her check and how she was going to pay for the damages. She did not respond.

He offered to settle the claim at the hearing for the \$807.75 final check, which the claimant declined.

The Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed wages for her final check in the amount of \$807.75.

The claimant seeks liquidated damages on these claims.

As no wages were awarded for the discrepancies, no liquidated damages can be awarded.

The claimant argues the employer held her last pay check. She denies receiving a text from the employer to pick up her last check.

The employer credibly argues they produced the check and had it available for pick up at their location, and that he texted her to retrieve it, and she did not respond.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay her all wages due in the time required because the employer had the check available.

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 that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed discrepancies in her wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that she is owed the claimed final weeks' wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$807.75.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$807.75, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 27, 2017

Original: Claimant
cc: Employer

MJD/nm