

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v

Accurate Tree Service LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 279:21 VIII unpaid overtime

Employer: Accurate Tree Service LLC, 150 Londonderry Tnpk, Hooksett NH 03106

Date of Hearing: January 23, 2018

Case No.: 55785

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$52,200 in unpaid overtime wages for the sixty weeks between August 28, 2015 and November 29, 2016, when he resigned. He argues he received an hourly rate but was only paid for forty hours each week.

The employer denies the claimant was not paid for all wages due. The claimant was a salaried employee at all relevant times during this claim.

FINDINGS OF FACT

The claimant worked for the employer from August 13, 2013 through November 29, 2016.

The claimant argues he was at all relevant times for this claim an hourly employee. He presented documentation, previously submitted, of a written notification from the employer showing a rate of pay of \$29 per hour as of August 28, 2015, which he argues remained in effect until his separation from employment on November 29, 2016.

The employer argues he was a salaried employee during the period of time claimed. They presented documentation, previously submitted, that showed the claimants change in rate of pay as follows:

- At hire on July 23, 2013 \$18 per hour
- November 8, 2013 \$52,000 per year salary
- June 5, 2014 \$60,320 per year salary

The claimant argues he does not recall any meeting to change his salary on June 5, 2014. The employer argues that the writing on the forms showing the claimant's change in rate of pay on August 28, 2015, is not theirs.

The documentation presented by the parties shows some alteration.

The claimant's August 28, 2015, notification shows a rate of pay of \$29 per hour, but shows a subsequent "change" of rate of pay of \$18 per hour on July 23, 2013 further down on the form, in the section of the form that would be used for changes in rates of pay later in employment.

The employer's July 23, 2013 notification showing a rate of pay of \$18 shows a subsequent change of pay to \$52,000 on November 8, 2013.

Not only does the documentation from both parties tell a very different story of the timeline of the wages the employer notified the claimant they would pay, but clearly one of the parties altered their form. The notification of the July 23, 2013 rate of pay of \$18 from both parties is identical, however it appears that one party copied that documentation onto another piece of paper the notification that best suited their case.

If the employer's documentation were correct, the claimant would be a salaried employee and ineligible for overtime pay. If the claimant's documentation were correct, he would be eligible for overtime pay.

The Hearing Officer is unable to determine which party altered the form.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that his documentation is correct and that he was not paid for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden of proof as his story 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 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.

Date of Decision: February 13, 2018

Original: Claimant
cc: Employer