

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

**v.**

**Diggins & Rose, Inc.**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:48 I withholding of wages

**Employer:** Diggins & Rose, Inc., 3 Sagamore Park Road, Hudson, NH 03051

**Date of Hearing:** December 19, 2017

**Case No.:** 56199

**BACKGROUND AND STATEMENT OF THE ISSUES**

The current issue concerns the matter of alleged unpaid wages. The claimant began work for the employer as a CDL driver and laborer. The claimant asserts he is owed \$591.25 from his wages being "docked." The employer holds the claimant's wages were not held back, but rather his hourly rate decreased in conjunction with a demotion based on performance. The employer holds the claimant has been paid all wage due.

On the basis of the claimant's assertion he is owed unpaid wages the claimant filed a Wage Claim with this Department on October 13, 2017; a Notice of Wage Claim was forwarded to the employer on this same date. The employer's objection to the wage claim was received by this Department on October 17, 2017 and forwarded to the claimant this same date. The claimant requested a Hearing on October 27, 2017 and accordingly a hearing was held on December 19, 2017.

**FINDINGS OF FACT**

The claimant began working for the employer in June 2017; he resigned his position on September 13, 2017.

The claimant initially earned \$16.00 per hour and was paid weekly.

On July 17, 2017 the claimant had an accident with an employer's vehicle on company property.

The claimant did not report the accident to the employer.

The accident was reported to the employer by another employee.

On July 18, 2017 the employer met with the claimant and notified him he was being demoted and his pay reduced by \$2.00 per hour.

### **DISCUSSION**

“Docking” refers to a deduction(s) from gross pay amount and is often illegal.

RSA 275:48 I precludes employers from withholding or diverting wages (except in specific circumstances); however, the Hearing Officer finds the evidence and testimony provided in this claim describe employer actions which are consistent with New Hampshire Labor Law. RSA 275:49 requires employers to give advance notice to employees before changing their pay. The employer notified the claimant in advance he was going to be demoted and his pay decreased due to the circumstances related to the accident.

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

The Hearing Officer finds that the claimant failed to meet this burden. It is found that the claimant’s pay was not “docked” but reduced in a manner consistent with New Hampshire Law. Therefore, the Hearing Officer finds the claimant fails to prove by a preponderance of the evidence that he is owed additional wages in the amount of \$591.25.

### **DECISION**

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:48 precludes employers from deducting or diverting wages except in specific circumstances, and as this Department finds the claimant failed to prove by a preponderance of evidence he is due \$591.25, it is hereby ruled this Wage Claim is invalid

---

David M. Zygmunt  
Hearing Officer

Date of Decision: January 12, 2018

Original: Claimant  
cc: Diggins & Rose, Inc., 3 Sagamore Park Road, Hudson, NH 03051  
Attention: John Molina

DMZ/nm