

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Good & Plenty Restaurant Corp

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Good & Plenty Restaurant Corp, 5 Pine Knoll Dr, Rochester NH 03867

Date of Hearing: January 2, 2018

Case No.: 56360

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$20,300 in unpaid wages for hours worked during various times between October 2015 and October 2017. She states that she performed work as a dishwasher during the same time she was paid and performed work as a waitress. She received her regular tipped rate of pay per hour and seeks an additional \$7.25 per hour on top of that rate for her function as a dishwasher.

The employer denies the claimant was not paid properly for all time worked. While he agrees that the wait staff did wash dishes, it was not their primary function. A regular dishwasher was scheduled and another man named "Bob" also came in to do dishes.

FINDINGS OF FACT

The claimant worked for the employer during various times between October 2015 and October 2017. She was at all times paid a tipped rate of hourly pay as a server.

The claimant argues she worked full time during her shifts as a server washing dishes when no one else was schedule to wash dishes and should be compensated an additional \$7.25 per hour in addition to the tipped server rate she had previously received.

The employer argues that she did not work full time as a dishwasher. At the restaurant, they work as a team to accomplish all the tasks that need to be performed. He did have a regular dishwasher and "Bob" who performed many different tasks, including dishwashing.

Lab 803.02 (g) No employer shall pay a tipped employee, as described in RSA 279:21, who is not engaged in duties that regularly and customarily generate tips directly

from the customer, a base rate of less than the applicable minimum wage. This prohibition shall not apply to duties that are incidental to the regular duties of the tipped employee and generally assigned to the tipped employees. Effective date April 11, 2016.

The claimant's argument that she performed dishwashing duties and should be compensated additional pay is not found persuasive. The claimant did not provide any persuasive testimony or evidence that she performed any tasks that were more than "incidental" to her regular and generally assigned tasks, in order to require a base rate of minimum wage from the employer.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due 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 she is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 8, 2018

Original: Claimant
cc: Employer

MJD/nm