

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Town of Chester

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Town of Chester, 84 Chester St, Chester NH 03036

Date of Hearing: February 21, 2018

Case No.: 56395

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$591.37 in unpaid wages for hours worked between February 2017 and June 2017. She initially claimed she worked December 2016 and January 2017, but she withdrew those hours at the hearing.

The employer denies the claimant was not paid for all time worked.

FINDINGS OF FACT

The claimant worked for the employer from 2012 through 2016 as a camp counselor. She was hired as a co-director for the summer camp in January 2017, for the summer of 2017. The hiring process happened earlier than usual because the claimant was leaving in February to study abroad in Australia and would not return until June 2017.

The claimant argues she performed work for the employer while she was studying abroad in Australia. She argues she did not know that she should be paid for performing this work until she returned and had discussions with her mother. She admits she did not keep any contemporaneous notes for time spent performing any of the tasks she outlined in her claim, but estimated how many hours she thought she spent working upon her return from Australia.

The employer credibly argues the claimant was not directed nor expected to perform any work while she was in Australia. They also argue that they did pay her extra hours for work performed at home while she was in New Hampshire, before and after her trip abroad, documentation previously submitted.

The employer erred in failing to keep a true and accurate record of hours worked by the claimant as required by RSA 279:27. They did pay the claimant for additional

hours to cover work performed in New Hampshire. The claimant did not present any objections or disagreements to the wages paid for at home work.

The Department must first determine whether this Department has jurisdiction over work performed in Australia.

Attorney General Charles T. Putnam issued an Opinion of the Attorney General, #87-35 (1987). The cited opinion provides the criteria for jurisdiction under New Hampshire Department of Labor.

The Opinion of the Attorney General #87-35 issued by Attorney General Charles T. Putnam reads:

“In determining whether it would be fundamentally fair to these parties to have the division decide this action, the following factors were examined:

- (a) was the work performed in New Hampshire?
- (b) was the employment principally located in New Hampshire?
- (c) Did the employer supervise the employee’s activities from a place of business in New Hampshire?
- (d) Did the parties agree in the employment contract or otherwise that their rights should be determined under New Hampshire wage payment statute?
- (e) Does New Hampshire have some other reasonable relationship to the parties and the employment?

The Hearing Officer finds that the work was not performed in New Hampshire. The employment was not principally located in New Hampshire. The claimant was not supervised from New Hampshire. No agreement was presented to show the parties agreed to rights under the New Hampshire wage payment statute. No argument was presented to show New Hampshire has a reasonable relationship to the parties and the employment.

Therefore, under the Opinion of the Attorney General #87-35 issued by Attorney General Charles T. Putnam, this Department lacks jurisdiction in this matter.

Even if this Department did have jurisdiction, the claimant admitted she did not keep contemporaneous notes of her hours worked. She estimated the hours worked between February and June 2017 upon her return in July 2017. She did not provide documentation to show her work product or evidence of her performing work for the benefit of the employer.

Therefore, the Hearing Officer would have found that the claimant failed to prove she worked the hours claimed and was due the claimed wages.

DECISION

Based on the testimony and evidence presented, this Department lacks jurisdiction in this matter.

Date of Decision: March 7, 2018

Original: Claimant
cc: Employer
Employer's Attorney