

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Natural Dharma Fellowship dba Wonderwell Mountain Refuge

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Natural Dharma Fellowship dba Wonderwell Mountain Refuge, 253
Philbrick Hill Rd, Springfield NH 03284

Date of Hearing: January 16, 2018

Case No.: 56461

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was due between \$9,497.85 and \$15,612.40. At the hearing, he clarified he was owed \$19,745 in unpaid minimum wage earned throughout his entire employment of January 2015 through July 29, 2017. He argues he was paid a monthly salary that did not cover minimum wage for all the hours actually worked.

The employer denies the claimant was is due any further wages as he was paid all salary due and received housing as part of his compensation.

FINDINGS OF FACT

The parties agree that the claimant worked for the employer from January 2015 through July 29, 2017. He received a monthly salary and housing during his employment. He received the following salary amounts:

- January to April 2015 \$250 per month
- May and June 2015 \$350 per month
- July to December 2015 \$500 per month
- January to December 2016 \$500 per month
- January to July 2017 \$850 per month

The claimant argues that the salary he received did not cover the statutory minimum wage for all hours worked. He also agrees he lived at the facility as part of his employment benefits.

He argues it was required, by written agreement, to work thirty hours a week between January and June 2015; between thirty and forty hours per week between July 2015 and December 2016; and between thirty-five and forty hours per week between January 2017 and July 2017.

He credibly testified that he worked greater than the required hours; however, he is only claiming wages for the maximum hours required by written agreement.

The employer initially argued the claimant was not an employee, but subsequently agreed that their written agreement accepted responsibility for him as an employee as Workers Compensation Insurance was offered as a benefit.

The employer also argued the claimant received minimum wage for all hours worked among his salary, the room and board at the facility, training, and opportunities for retreats, which were all included in his compensation.

They further argued that there was no witness to the claimant working the hours he claimed. They also allege that the claimant's performance was problematic.

RSA 275:43-b requires that an employer pay a salaried employee their full salary for any pay period in which the employee performs any work and Lab 803.02 (a) states no employer shall pay a salaried employee compensation in an amount, that when compared to the hours of any workweek, falls below the minimum wage per RSA 279:21 (for all relevant times during this claim, \$7.25 per hour).

The claimant worked at least the following number of hours:

- January to April 2015 \$250 per month 30 hours per week/18 weeks
- May and June 2015 \$350 per month 30 hours per week/8 weeks
- July to December 2015 \$500 per month 40 hours per week/26 weeks
- January to December 2016 \$500 per month 40 hours per week/52 weeks
- January to July 2017 \$850 per month 40 hours per week/28 weeks

The difference between the statutory minimum wage (\$7.25) and the salary received is:

- January to April 2015 30 hours/18 weeks=\$3,915-\$1,000 salary=\$2,915
- May and June 2015 30 hours/8 weeks=\$1,740-\$700 salary=\$1,040
- July to December 2015 40 hours/26 weeks=\$7,540-\$3,000 salary=\$4,540
- January to December 2016 40 hours/52 weeks=\$15,080-\$6,000 salary=\$9,080
- January to July 2017 40 hours/28 weeks=\$8,120-\$5,950 salary=\$2,170

The employer's argument that the claimant did not submit a time sheet is not persuasive. RSA 279:27 and LAB 803.03 require that every employer of employees shall keep a true and accurate record of the hours worked by each, including time work

began and ended including any bonafide meal periods. The employer failed to maintain such records (on file) and the claimant credibly testified that not only did he work the hours claimed, but that the hours claimed are a conservative estimate of hours actually worked.

The employer's argument that the claimant received housing as part of his compensation is also not persuasive. RSA 275:48 I (b)(4) allows housing to be deducted from wages, however, the employer did not make any deductions from the claimant's wages. RSA 279:21-a provides for allowances for housing for employment in the hotel, motel, cabin, tourist home and restaurant industries, which does not apply to this employer.

The employer did pay the claimant a bonus of \$500 for 2016 and \$1,700 upon separation, \$850 was a payment for his unused vacation pay and \$850 as goodwill.

The Hearing Officer finds the claimant worked the hours claimed. He also received the noted salary as stated in the table above, which, after comparison with the number of hours worked per week, falls below the minimum wage rate set forth in RSA 279:21 and the requirements of Lab 803.02 (a). The exemptions or allowances in RSA 275:48 I (b)(4) and 279:21-a are not applicable to the facts of this case.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed minimum wage in the amount of \$19,745. The employer is allowed an offset of the \$500 2016 bonus of \$850 goodwill payment 2017 towards a minimum wage claim, leaving a balance due to the claimant in the amount of \$18,395.

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 RSA 279:21 requires an employer to pay employees at least the hourly rate forth in the federal minimum wage laws (\$7.25) and Lab 803.02 (a) states no employer shall pay a salaried employee compensation in an amount, that when compared to the hours of any workweek, falls below the minimum wage per RSA 279:21, and as this Department finds that the claimant proved by a preponderance of the evidence that he is owed the claimed unpaid minimum wage, it is hereby ruled that the Wage Claim is valid in the amount of \$18,395.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$18,395, less any applicable taxes, within 20 days of the date of this Order.

Date of Decision: February 13, 2018

Original: Claimant
cc: Claimant's Attorney
Employer
Employer's Attorney