



correspondence was forwarded to the claimant on March 12, 2018. The claimant requested a Hearing on April 11, 2018.

A formal hearing on this matter was scheduled for May 8, 2018 at the New Hampshire Department of Labor in Concord, New Hampshire. The employer did not appear for the hearing. After waiting fifteen (15) minutes with no response from the employer that he was delayed or running late, and in accordance with Lab Rule 203.04, the hearing went forward with the testimony of the claimant.

### **FINDINGS OF FACT**

The employer recruited the claimant from a charitable gaming establishment he frequented.

The employer hired the claimant into the position of Finance Director. Her responsibilities included cage manager<sup>2</sup> as well as processing payroll. The business opened on December 30, 2017.

The claimant worked 69.05 hours the first week she worked for the employer.

On January 8, 2018, and after the employee's first week of work, the employer notified the staff via email that they would be paid for forty (40) hours only, with the expectation the workers would only submit forty (40) hours of work; the remaining hours worked would be considered hours volunteered.

The claimant and other workers promptly voiced their concern to the employer regarding this email.

In a follow-up email to employees dated January 11, 2018 the employer announced to employees that their hours worked in excess of forty (40) hours would be banked as compensatory time for ninety (90) days at 1.5 hours for each hour worked more than forty (40) hours.

The claimant testified she knew, having worked over ten years for her previous employer in a similar capacity in the charitable gaming industry there were rules and timelines mandated by the State of New Hampshire that needed to be observed. She testified she specifically reminded the employer on numerous occasions that their books needed to be finalized and checks written to the charities as well as the State of New Hampshire for their portion of each day's profits. The employer did not heed the claimant's reminders. In January, 2018 the employer was fined by the New Hampshire Lottery, Racing and Charitable Gaming Division.

The employer blamed the claimant for the fine and summarily fired her. The claimant's former employer of over ten years offered her her old job back; the claimant accepted.

On March 12, 2018 the Department received the employer's objection to the Wage Claim along with an offer of a \$318,71<sup>3</sup> settlement with a request for a Hearing if this amount was unacceptable to the claimant.

In his March 12, 2018 correspondence the employer expresses shock at the number of hours that employees had submitted for their first tabulation of hours, he wrote that some employees show start times of 10:00 am and ending time of 3:30 (presumably “am”) and he expressed wonder how that could possibly be, as they were only open 12 (presumably 12:00 pm) to 1:00 am.

This statement stands in sharp contrast with an email the employer sent to employees on December 31, 2017. In it, he singled-out the claimant for praise, he wrote she worked at a level well above the rest the evening before, and described her fatigue by writing she staggered out of the business at 2:30 am.

In his March 12, 2018 correspondence the employer lists a litany of deductions he made to the claimants last pay, for a “destroyed computer” (\$500.00), “accidental payment of 120 hours of payroll stipend of \$10/hour” (\$1,200), “deduct overtime never authorized or performed. We were closed many Of the hours??” (sic) (\$1,803.30). The employer notes the total of the deductions is \$3,503.30 and is willing to settle for the difference of the claimed amount of \$3,822.01 less the deductions, or \$318.71.

The claimant testified she made numerous attempts to obtain her final wages.

The employer failed to appear for the Hearing he requested with credible testimony and evidence to refute that of the claimant.

## **DISCUSSION AND CONCLUSIONS**

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she is owed 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 employer’s requirement that employees volunteer the time they worked in excess of forty (40) hours for the pay period back to the employer violates RSA 275:43 I which requires employers to pay all wages due to employee, on regular paydays designated in advance.

After employees protested the employer’s directive to regard their time worked in excess of forty (40) hours as time volunteered. The employer followed by instituting a scheme whereby the hours worked by employees beyond forty (40) hours were to be banked as comp time. RSA 275:43 V restricts the use of compensatory time off as compensation to governmental agencies.

RSA 279:21 VIII requires employees be paid at the rate of time and one-half for all time worked in excess of forty (40) hours in any one week. This Hearing Officer finds the claimant’s testimony that she worked the number of hours in excess of forty (40) hours credible and her descriptions and evidence of the employer’s repeated attempts to avoid paying overtime also credible.

In his March 12, 2018 correspondence to the Department, the employer writes the employee earned \$25.00 per hour. The claimant submitted three (3) wage statements that cover her first day of work through January 19, 2018; they reflect she was paid \$35.00 per hour. The calculations the employer uses in determining his partial

payment of \$318.71 began with the amount claimed. The amount claimed is based upon a \$35.00 per hour rate-of-pay.

This Hearing Officer finds the claimant proved by a preponderance of evidence that she is owed wages for working forty (40) hours of straight time or \$1,400.00 (40 hours x her rate of pay of \$35.00 per hour) from January 20, 2018 through January 26, 2018 plus 2.73 hours of overtime for the period, or \$143.33 (2.73 hours x her overtime rate of pay \$52.50) for a combined total of straight time and overtime hours for the period of \$1,543.33.

Additionally, this Hearing Officer finds the claimant proved by a preponderance of the evidence that she is owed wages for working 13.58 hours of straight time or \$475.30 (13.58 x \$35.00) between January 27, 2018 and January 30, 2018.

Additionally, this Hearing Officer finds the claimant proved by a preponderance of the evidence that she is owed wages for working overtime; these hours had been taken by the employer and banked. The banked overtime hours totals 34.35 hours; multiplied by her overtime rate of \$52.50 equals \$1,803.38 (34.5 x \$52.50).

Therefore this Hearing Officer finds the claimant proved by a preponderance of evidence that she is owed subtotals of \$1,543.33 (from January 20, 2018 through January 26, 2018), plus \$475.30 (from January 27, 2018 through January 30, 2018) plus \$1,803.38 from her overtime the employer banked, or \$3,822.01 (\$1,543.33 + \$475.30 + \$1,803.38) less the \$318.71 partial payment,

The reasons for the deductions the employer references in his March 12, 2018 correspondence, even if true (this Hearing Officer is not suggesting they are) were not authorized by the claimant, nor are they legitimate deductions permissible under RSA 275:48.

The claimant was particularly well organized and articulate at the Hearing; her argument was clear, cogent and well thought-out, her testimony and evidence credible.

This Hearing Officer finds that the claimant proved by a preponderance of evidence that she is due wages for time she worked in the amount she claimed \$3,822.01, less a partial payment of \$318.71 or \$3,503.30.

## **DECISION**

Based on the evidence and testimony presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 279:21 requires employers pay employees at the rate of time and one-half for all time worked in excess of forty (40) hours in any one week and as the Department finds the claimant proved by a preponderance of evidence she is owed the claimed wages it is hereby ruled this Wage Claim is valid in the amount of \$3,822.01 less a \$318.71 partial payment or \$3,503.30 (\$3,822.01 - \$318.71).

The employer is hereby ordered to send a check to the Department, payable to [REDACTED] in the total of \$3,503.30 less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

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[REDACTED]  
Hearing Officer

Date of Decision: June 1, 2018

Original: Claimant

Cc: Cheers, P. R. & C. Gaming Corporation, 286 North Broadway,  
Salem, NH 03079  
Attention: [REDACTED]

[REDACTED]