

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

NH Academy of Artistic Gymnastics, Inc.

DECISION OF THE HEARING OFFICER

Appearances:

Nature of Dispute: RSA 275:43 I unpaid wages

Claimant:

Employer: NH Academy of Artistic Gymnastics, Inc.

Date of Hearing: September 26, 2018

Case No.: 57645

BACKGROUND AND STATEMENT OF THE ISSUES

The employer operates a training facility for gymnasts. The claimant worked for the employer from September 2017 through June 23, 2018 as an instructor. She also used the facility to train with her coach.

The business experienced a change in management during the month of May 2018 at which time the owners assumed management control.

The parties disagree as to the pay arrangement following the change in management. The employer holds the parties agreed to an arrangement whereby the claimant would use the facility for training free of charge in exchange for teaching some children's classes.

The claimant argues she paid the fees (referred to by the employer as "tuition") for the final months she worked teaching and is owed \$490.00 for two (2) months of unpaid wages.

On the basis of the claimant's assertions she is owed wages she filed a Wage Claim with the Department on August 3, 2018; a Notice of Wage Claim was forwarded to the employer on August 6, 2018. The employer's objection was received by the Department on August 16, 2018. A Notice of Employer's Objection was forwarded to the claimant on August 16, 2018. The claimant requested a Hearing on August 27, 2018 and Hearing Notices forwarded to the parties on September 5, 2018. Accordingly, a Hearing was held at the Department on September 26, 2018.

FINDINGS OF FACT

The employer testified their previous management team resigned on May 18, 2018 and as owners of the business they subsequently assumed management control of the business.

The claimant worked for the employer under prior management as a gymnastics instructor; she earned \$10.00 per hour and paid biweekly. She argues she continued to do so under the employer's management. Her duties included coaching gymnastics to preteens. The claimant testified that she resigned from the employer on June 23, 2018

The employer spoke of experiencing financial difficulties at the time of the management change and that they are in the process of rectifying the issues. The employer testified they have no records for the period prior to May 17, 2018 when the previous managers ran the business. The employer testified that they discovered employees had not been paid, some parent's tuition had not been credited to their accounts, and financial records including bank statements and computers containing payroll information were missing.

The employer acknowledges that under the previous management the claimant could have been treated as a half-time employee for working with a younger group of gymnasts.

After the change in management the employer offered the claimant the use of the facility at no cost if she helped out with one of their programs. The fee, or "tuition," to be waived was \$300.00 per month.

However, the claimant testified because she was not informed otherwise she assumed she would be paid as per the process with the former management.

The claimant submitted a time card as evidence she argues reflects the days and hours she worked.

The employer testified they never received any time card submitted by the claimant. They argue it was their assumption that the claimant had taken them up on the offer of exchanging hours worked coaching with free use of the facility.

The employer did not challenge the claimant's assertion that she worked the hours she claims but would like to know if he is owed money for her gym usage.

The claimant testified she made tuition payments for the final months she used the gym to her coach as was customary under the prior management.

The employer argues the claimant never paid her tuition for two (2) months and does not owe the claimant wages.

The claimant holds she is owed \$490.00 for two (2) months of unpaid wages from May 17, 2018 through June 6, 2018.

DISCUSSION

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.

RSA 275:43 requires in-part that every employer pays all wages due to employees, on regular paydays designated in advance by the employer and at no cost to the employee in lawful money of the United States.

The employer did not challenge the claimant's assertion she worked the hours she claimed but questions as to whether he is owed unpaid tuition. RSA 275:43 does not permit the kind of barter arrangement the employer describes where the claimant was to be paid gym access in exchange for wages. Additionally, RSA 275:48 restricts employers' deductions from, or withholding of, employee wages to specific circumstances; withholding the claimant's wages for the reasons and manner described is not included.

The claimant provided credible evidence and testimony she worked the forty-nine (49) hours she claimed and has not been paid; therefore this Hearing Officer finds the claimant proved by a preponderance of evidence she is owed the claimed wages

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 the Department finds the claimant proved by a preponderance of evidence she is owed wages in the amount of \$490.00 (49 hrs. x \$10.00 per hour) it is hereby ruled this Wage Claim to be valid.

The employer is hereby ordered to send a check to the Department, payable to [REDACTED] [REDACTED] in the total of \$490.00 less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

[REDACTED] [REDACTED]
Hearing Officer

Date of Decision: October 25, 2018

Original: Claimant

Cc: NH Academy of Artistic Gymnastics