

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

J & F Landscaping

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I Weekly, Unpaid Wages

Claimant: [REDACTED]

Employer: J & F Landscaping

Date of Hearing: October 18, 2018

Case No.: 57734

BACKGROUND AND STATEMENT OF THE ISSUES

The employer operates a landscaping business.

The claimant worked for the employer as a laborer and supervisor.

The current issue concerns alleged unpaid wages; the claimant argues he is owed \$1,500.00 in wages.

The employer holds he may possibly only owe the claimant a couple of hours.

On the basis of the claimant's assertions he is owed unpaid wages. He filed a Wage Claim with the Department on August 24, 2018; on August 27, 2018 a Notice of Wage Claim was forwarded to the employer. The Department received the employer's objection to the Wage Claim on September 10, 2018, a Notice of Employer's Objection was forwarded to the claimant on the same day. The claimant requested a Hearing on September 14, 2018; Hearing Notices were forwarded to the parties on September 26, 2018. Accordingly a Hearing was held at the Department on October 18, 2018.

It should be noted the claimant was twenty-five minutes late for the Hearing without justification.

At the Hearing the claimant made a request to submit two additional items into evidence. He had not given copies of these items to the employer for his review prior to the Hearing. One requested set of proposed evidence consisted of multiple pages of paper lacking any order. Notations were randomly scrawled across these pages. The second set of items consisted of texts on the claimant's phone from individuals who were allegedly former employees.

Lab 204.07(a) requires, in-part, that: "The party requesting the hearing shall be responsible for compiling all written evidence to be considered by the hearing officer. This compilation shall be indexed, tabbed, paginated and in chronological order within each tabbed section." Lab 204.07(b) requires evidence to be received by the other party and the Department **at least two (2) business days** prior to the Hearing. Neither of the sets of material the claimant requested to be submitted into evidence meets the requirements set forth in Lab 204.07(a). Pursuant to Lab 204.07(a) and Lab 204.07(b) this Hearing Officer denied the claimant's request to have the two sets of material submitted into evidence.

The claimant testified at the Hearing the employer owes him reimbursement for expenses he incurred on behalf of the business. Lab 204.03 (b), (d) require that parties to the claim be notified of the Hearing at least fourteen (14) calendar days in advance of the scheduled Hearing and that the Notice contain the section of law by statute number and heading related to the issues of the dispute. As the employer was not duly notified that the claimant's alleged expenses were part of his claim they cannot be considered as part of the current proceeding.

FINDINGS OF FACT

The claimant testified he performed landscaping, masonry and irrigation work for the employer; he began working for the employer in April 2018, the employer fired him on "roughly" July 3, 2018.

The claimant earned \$15.00 per hour and paid weekly.

The claimant testified he is owed wages for the period April 28, 2018 through May 26, 2018; he speculated he is owed wages on three hundred eighteen (318) hours of work. He testified an agreement was made with the employer for payment of wages owed, then the employer did not follow through.

The employer testified he does not agree with any of the claimant's testimony.

The employer testified he and the claimant attempted to resolve the current issue but did not arrive at an agreement.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he 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 claimant relied upon his testimony only. That testimony regarding the number of hours he worked, for which he is allegedly owed wages by the employer, were referred to in general terms and it lacked any specific details.

This Hearing Officer did not find the claimant's testimony credible.

The claimant failed to provide credible evidence and testimony he is owed the wages he claims and therefore this Hearing Officer finds the claimant failed to prove by a preponderance of evidence he is owed additional 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 this Department finds the claimant was unable to prove by a preponderance of evidence he is owed the claimed wages, it is hereby ruled this Wage Claim to be invalid.

Hearing Officer

Date of Decision: November 21, 2018

Original: Claimant

Cc: J & F Landscaping
