

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Wrecking Ball LLC

DECISION OF THE HEARING OFFICER

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

Date of Hearing: December 10, 2018

Case No.: 57888

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,700 in unpaid salary for hours two weeks of work.

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

FINDINGS OF FACT

The claimant worked for the employer from January 28, 2018 through June 1, 2018. He was a salaried employee. His initial salary was \$500 weekly for the first three weeks, which increased to \$850 weekly for four weeks. His salary then decreased to \$750 weekly on March 20, 2018 through the remainder of his employment.

The claimant argues he worked for a total of eighteen weeks and only received payment for sixteen weeks. He seeks the balance of the two weeks at a rate of pay of \$850.

He agreed he received the following:

- \$1,500 – Cash payment 2/20/18 for two weeks of salary at \$500 each and \$500 the employer agreed to pay for one half of a crossfit certification
- \$1,700 – Check dated 3/20/18 for two weeks of salary at \$850 each
- \$2,450 – Check dated 4/12/18 for three weeks of salary, two weeks at \$850 and one week at \$750
- \$750 – Direct deposit 4/20/18 for one week of salary
- \$750 – Direct deposit 4/25/18 for one week of salary
- \$1,500 – Direct deposit 5/4/18 for two weeks of salary
- \$1,500 – Direct deposit 5/18/18 for two weeks of salary
- \$1,500 – Direct deposit 6/1/18 for two weeks of salary
- \$750 – Direct deposit 6/15/18 for one week of salary

The employer agrees to the dollar amounts received by the claimant but she argues that there was no agreement to pay \$500 for the crossfit certification and that \$500 was in actuality one week of salary.

She further argues that the claimant took five days, or one week, off over the course of his employment. She argues she is not required to pay him for this week because she did not offer vacation pay as a benefit. She did acknowledge he did not take an entire week off at any time but one or two days together over the course of his employment and performed some work during each week he was employed.

As a salaried employee, the claimant is owed his salary, in full, for any pay period in which he performs any work, regardless of the number of days or hours worked, pursuant to RSA 275:43-b. Further, the employer did not deduct the individual days from the claimant's salary contemporaneously, but is now attempting to use those already paid days to account for his final week of salary payment. The employer is precluded from using those payments for previously paid salary because the claimant was due his full salary for each of those pay periods.

The parties each tell a passionate story regarding whether the employer agreed to pay one half of a crossfit certification. Neither party presented persuasive testimony as to the conversation. No agreement was memorialized in writing. Therefore, it is found that the \$500 in question of the initial 2/20/18 cash payment was a weeks' salary, not repayment for a crossfit certification.

CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that the employer agreed to pay one half of his crossfit certification, or \$500. The Hearing Officer finds that the claimant failed to meet that burden of proof as his story was not more persuasive than the employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed one week of claimed salary.

Because the employer is required to pay the claimant his full salary for each period in which he performs any work, she is precluded from using the payment for those days as his final week of salary. Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due one week of salary at the rate of \$750.

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 as RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant proved by a preponderance of the evidence that he was not paid all wages/salary due, it is hereby ruled that the Wage Claim is valid in the amount of \$750.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$750, less any applicable taxes, within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: December 14, 2018

Original: Claimant
cc: Employer