

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Dan O'Brien Kia LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Date of Hearing: November 26, 2018

Case No.: 57929

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$809.20 in unpaid wages for hours worked between August and September 2018. He states that the unpaid work was performed during several days for training and lunches which the employer deducted from his hours.

The employer denies the claimant was not paid for all time worked. They further assert that the claimant signed a release stating he was paid all wages due.

FINDINGS OF FACT

The claimant worked for the employer between August and September 2018. He left by mutual agreement with the employer.

The claimant argues he performed four tests on September 10, 2018, and that the employer had been deducting one half hour from his daily hours for lunches which he claims he did not take. He acknowledges he spoke with an inspector from this Department who advised him to sign the release offered by the employer to receive the check they were offering and then he could file a wage claim for anything he felt was still due.

The employer argues they paid the claimant all wages due and the claimant signed a release stating he was happy with the outcome and would close any open cases with state or private agencies.

The claimant did not present any persuasive testimony or documentation to show the hours he was requesting had been worked, hours that he had received payment for, or hours missing from wages paid.

Because no wages are found to be owed, no liquidated damages can be awarded.

DISCUSSION

Even if the wages had been found due and owing, the claim for liquidated damages would have failed.

The claimant made no argument for liquidated damages.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The claimant would have the burden to prove by a preponderance of the evidence that the employer voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed, fails to pay them. He failed to overcome this burden.


CONCLUSIONS

Because the claimant did not provide persuasive testimony or documentation to show he did not receive all wages due for hours worked, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.


Hearing Officer

Date of Decision: November 29, 2018

Original: Claimant
cc: Employer

MJK/so