

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Custom Electric & Communications, LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 279:21 VIII unpaid overtime wages

Date of Hearing: December 18, 2018

Case No.: 58033

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$13,210 in unpaid overtime wages for time spent at the shop prior to his start time of 7:30am and travel time hours from the last job of the day back to the shop, which were worked between May 2015 and April 30, 2018.

At the hearing, the claimant understood that any claim for wages due prior to October 17, 2015, would be outside the statute of limitation imposed by RSA 275:51 V, as he filed his wage claim on October 16, 2018.

The employer denies the claimant was not paid for all time worked. They assert they paid the claimant pursuant to his work orders and shop slip time sheets, which the claimant completed himself.

FINDINGS OF FACT

The claimant worked for the employer from September 25, 2014 through April 30, 2018, when he was terminated.

The employer's shop is located in New Hampshire. The claimant acknowledged there were "lots of jobs in Massachusetts" and a lot of the travel time was from those jobs back to the employer's New Hampshire shop location.

The claimant argues he regularly arrived to work at 7:00am, but he did not start getting paid until 7:30am. He agrees all his time cards, which he completed, "probably" say 7:30am as a start time. He further argues he was not paid for travel time from the last job of the day back to the shop, and any work performed at the shop at that time. He seeks \$13,210 of overtime wages as due.

The claimant acknowledges he completed all of his own work orders and shop slip time sheets, and was paid in full, including the requisite overtime, for all hours he submitted to the employer.

The claimant argues he learned to complete these time records from other employees who informed him that he was not to use a start time of earlier than 7:30am (except for specific jobs which had an earlier start time) nor use a later end time than time finished with the last job site, regardless of the time spent traveling back to the shop and any time spent unloading or loading of tools, materials or equipment. He did not receive this direction from the employer for completing his required time records.

The claimant also clarified the hours sought were only for days in which he was required to go to the shop to get a company vehicle prior to jobs and for the return trips when he was required to return to the shop. He also noted that for approximately the last year of his employment, he was always the passenger in the company vehicle as the apprentice scheduled to work with him drove the vehicle. He drove for the prior three years.

He also specifically noted he is not seeking wages for days in which he left from his home and returned to his home.

He feels he should be paid for all time spent in a company vehicle.

RSA 275:51 V requires that an employee file a Wage Claim no later than 36 months from the date the wages were due. This Wage Claim was filed with this Department on October 16, 2018. Therefore, any portion of the claim for wages due prior to October 17, 2015, cannot be dealt with through this decision.

The employer denies the claimant was not paid for all time worked. They assert they paid the claimant pursuant to his work orders and shop slip time sheets, which the claimant completed himself. Additionally, there were shop slip time sheets completed by Mr. Kibbe, when the claimant spent time discussing jobs with him at the shop.

At no time were his work orders and shop slip time sheets questioned when he worked hours outside of the regular day of 7:30am to 4:00pm or worked greater than 40 hours per week.

The claimant did not provide any calculation or narrative of the days and hours worked for which he seeks wages, nor any contemporaneous notes or calendar of days worked. He previously submitted copies of the work orders and shop slip time sheets and a "tick" sheet of the number of the total number of hours due, which does not show detail of dates or times.

DISCUSSION

The claimant bears the burden to prove by a preponderance of the evidence he worked the time for which he claims wages and that the wages are due.

The claimant did not present persuasive testimony or evidence that he worked the claimed hours and was not paid for those hours.

The claimant completed his own time records, which were submitted to the employer and paid without question. The employer themselves on occasion submitted additional time for the claimant to receive pay for discussions at the shop.

The claimant's argument that he should be paid for all time spent in a company vehicle is not persuasive. Simply being in a company vehicle is not considered work time unless it is considered travel time pursuant to 29 CFR 785.33-.41, incorporated by reference at Lab 803.04.

The claimant acknowledged that much of the work was located in Massachusetts, which is also outside the jurisdiction of this Department.

CONCLUSIONS

As the claimant failed to present persuasive testimony and evidence that he worked the hours claimed and is due wages for those hours, 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.

[REDACTED]
Hearing Officer

Date of Decision: December 27, 2018

Original: Claimant
cc: Employer
Employer's Attorney