

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**Manchester School District**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages

**Date of Hearing:** February 27, 2019

**Case No.:** 58331

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed the balance of \$2,077.25 in unpaid wages because the employer failed to pay her correct daily rate from October 31 through December 21, 2018.

The employer argues the claimant did not complete the proper paperwork to receive the higher pay rate from Day One of employment.

**FINDINGS OF FACT**

The claimant worked for the employer as a substitute teacher from October 31, 2018, through December 21, 2018.

This claim arises out of the disagreement regarding her rate of pay.

The employer initially notified the claimant via email on October 4, 2018, at 9:41am, that he was able to get her approved at the per diem rate on Day One, documentation previously submitted.

The employer references a welcome letter in their documentation they claim was sent to the claimant via email on October 11, 2018, which has an addendum which reads, "Long term teaching assignments will earn per diem based on the teacher's salary scale beginning on the 21<sup>st</sup> day. NH Educator Certification in the area being taught is required for long term assignments". No documentation was submitted to show that this letter was sent via email. However, the claimant did receive an email from the employer on October 16, 2018, with a different welcome letter for substitutes which references \$70 payment per day for teacher assignments, with no addendum regarding long term teaching assignments. This exhibit appears in both the employer's documentation as well as the claimant's.

The employer emailed the claimant on October 13, 2018, stating a potential start date for employment and that “if everything is all set with the district office (police background check and Permission to Employ status) you’re good to go around November 1<sup>st</sup>.”

The employer subsequently sent an email on October 16, 2018, at 10:26am which notified the claimant that the rate of pay is \$70.00 per day for teacher assignments. The claimant immediately responded to this email at 10:51am stating she had previously been told she would receive the long term sub rate of \$226 per diem. She asked for confirmation. The employer responded at 2:46pm that her daily wage had been calculated at \$205.80.

The claimant worked the following days:

- October 31, 2018
- November 1, 2, 5, 7, 8, 9, 13, 14, 15, 16, 19, 20, 27, 28, 29, and 30, 2018
- December 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 18 (a partial day, she left sick), 19, 20 (a partial day, she left at 12:30pm) and 21, 2018

The claimant made several inquiries to the employer because she was continuing to receive the \$70 daily rate of payment. Ultimately, the employer determined she was receiving the \$70 daily rate instead of the \$205.80 because she did not have the Permission to Employ form from the New Hampshire Department of Education (DOE). She had the form signed and submitted on or around November 26, 2018, and within hours, it was approved from DOE.

The claimant received a daily rate of \$70 for each day worked. It is unclear if she received the full \$70 or partial payments for December 18 and 20, 2018. On December 27, 2018, the employer made an accounting calculation to retroactively pay the claimant the \$205.80 per day, after twenty-one days of employment, pursuant to the claimed October 11, 2018, welcome letter email. The documentation provided by the employer, Defendant’s Exhibit #1, was a payroll journal with hand written notes, which is not plainly understood on its face nor was it explained clearly in the hearing.

The claimant credibly testified she considered the additional payment on December 27, 2018, in her calculation for wages still owed and did not claim any wages owed pursuant to that payment.

### **DISCUSSION AND CONCLUSIONS**

The claimant argues she is due the balance of \$2,077.25, from difference in the daily rate of \$70 she received for all days worked and \$205.80 she was promised, accounting for a retroactive payment received on December 27, 2018.

The employer argues the claimant was told she needed to complete the Permission to Employ form and have it approved by the DOE before she could receive the daily rate of \$205.80, and additionally, pursuant to the October 11, 2018, welcome letter to substitutes, she was notified that she would not receive the long term teaching assignment pay until after the 21<sup>st</sup> consecutive day.

For this issue, we are concerned with notice of rate of pay to the claimant.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275:49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer acknowledged that the majority of their teaching personnel are represented by a union, which sets pay standards.

The employer haphazardly notified the claimant of different rates at different times prior to her beginning work on October 31, 2018, as evidenced in the submitted emails.

The employer noticed the claimant she would receive per diem pay on Day One, pursuant to the October 4, 2018, 9:41am email. Further, they noticed the claimant via email on October 16, 2018, at 2:46pm that her daily wage had been calculated at \$205.80. Nothing in any email or other submitted document noticed the claimant that in order to receive this rate she was required to have the Permission to Employ form approved by the DOE. The generic welcome letter, with two different versions, is not found to be proper notice or applicable to the claimant's employment as the employer engaged in specifics of payments and Day One applicability in direct emails.

Because the employer noticed the claimant she would receive the per diem rate as of Day One, and notified her that the per diem rate was \$205.80, and did not notify her she needed to complete any requirements to receive the \$205.80 rate on Day One, the Hearing Officer finds that the claimant proved by a preponderance of the evidence that she is owed the wages as claimed.

### **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 this Department finds that the claimant proved by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$2,077.25.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$2,077.25, less any applicable taxes, within 20 days of the date of this Order.

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[REDACTED]  
Hearing Officer

Date of Decision: March 7, 2019

Original: Claimant  
cc: Employer