

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



V

**Win Together, Inc.**  
**Case No.: 58404**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid employee expenses  
RSA 279:21 VIII unpaid overtime wages

**Date of Hearing:** March 19, 2019

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of his Wage Claim, that he was owed \$6,412.50 in unpaid overtime wages for hours worked for the first nine weeks of his employment beginning July 10, 2018; \$45 for an employee expense for a data charge; and \$1,497.54 in unpaid mileage for mileage after his ninth week of employment.

The employer paid the claimant the \$45 for the data charge prior to this hearing.

At the hearing, the claimant amended his claim to \$6,156.00 in unpaid overtime wages, because he improperly calculated his wages at \$25 per hour and should have been at \$24, and \$1,336.51 in unpaid mileage.

The employer denies the claimant is due any overtime as he was a salaried employee and not entitled to overtime wages. They further argue that they paid the claimant for all the mileage he submitted.

**FINDINGS OF FACT**

The claimant worked for the employer as the Canvas Field Director from July 10 through October 31, 2018, when he left the position. His rate and method of pay is at question.

The employer's previously submitted original posting of this position clearly states "the field director position is a full-time, salaried position."

The claimant sent a letter of interest for this position, previously submitted by the employer, in which he states he is finishing course work and must be "mindful of finishing".

The parties initially engaged in a verbal conversation regarding the hourly rate of pay, whether \$22, \$24 or \$25 per hour. There is disagreement as to whether it was to be paid hourly or used to calculate salary based on the rate and forty hours per week.

Testimony revealed the parties engaged in verbal conversations. Text conversations were submitted between Isaac Grimm and Peri Stockinger. Text messages show a discussion about \$22 or \$24 per hour, and whether it is hourly or salaried, and the date on which it would start. On July 25, 2018, at 4:28pm there is a text message of "lets do 24 salaried from the start" (meaning \$24 times forty hours for a weekly salary of \$960). The response is "That I can live with if he finds it acceptable" at 4:40pm. The last message in the text is "Yes hes good" at 4:53pm.

The employer previously submitted payroll records to show the claimant received a weekly salary of \$960 for every pay period beginning July 27, 2018, through October 31, 2018 (two separate payments were generated on July 27, 2018).

These payroll records also show mileage payments to the claimant beginning July 27, 2018 (both checks) through August 17, 2018. No further mileage payments are shown on the payroll report.

### **DISCUSSION AND CONCLUSIONS**

The claimant argues he was always an hourly employee entitled to overtime in the amount of \$6,156 and \$1,336.51 in unpaid mileage.

The employer argues the position was intended to be a salaried position, but upon request by the claimant because he claimed he was only available limited hours initially they considered an hourly rate. However, they assert on July 25, 2018, the claimant agreed to a weekly salary of \$960 calculated at a \$24 hourly rate times forty hours per week.

They further argue the claimant was paid for all the mileage he submitted for reimbursement, pursuant to the submitted payroll records.

The claimant argues he only learned the position was salaried on a three way conference call the first week of August 2018. He claims he would not have taken the job unless it was for hourly pay.

He tells a story of a contract offered by the employer to give him a bonus in approximately the amount of overtime he is claiming. He states he rejected the first contract offered, but that he signed the second contract offered. He claims to have the contract with him, but refused to offer it into evidence for consideration for this hearing.

The claimant's argument alone is not found persuasive. He is not willing to provide any of the documentation which might show proof of his position, nor did he provide documentation to show the hours he claimed he worked.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including any bonus, at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer failed in their obligation to notify the claimant at hire of his rate of pay. However, that does not guarantee the claimant prevails.

There was no agreement amongst the parties regarding the claimant's rate or method of payment for the period of July 10 through July 25, 2018, when the text message from Isaac Grimm states the claimant is agreeable to the salary calculated on a \$24 rate.

The claimant offered no time records to show the dates and hours that he worked, only the total dollar amount of his claim. The claimant notified the employer he would need to be mindful of finishing his coursework through August, therefore it does not seem likely he would have worked greater than the forty hours during these two weeks, though the text messages do reference some overtime worked.

Because the claimant did not provide any proof that he worked hours between July 10 and July 25, 2018, greater than forty hours his salary of \$960 would have covered, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed overtime for this period.

The text message of July 25, 2018, shows the parties had a conversation regarding the issue of rate of pay and an agreement, as credibly reinforced by the employer. The claimant received the same regular salary between July 25 and October 31, 2018.

Pursuant to RSA 275:43-b I A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked, which means they are not entitled to overtime wages for hours worked over forty in any given week.

Because the parties agreed to a salary on July 25, 2018, and the employer paid the claimant the regular agreed upon salary from July 25 through October 31, 2018, the Hearing Officer finds that the claimant fails to prove by a preponderance of the evidence that he is entitled to or owed the claimed overtime wages.

The claimant argues he was not able to request the reimbursement for mileage because he was told he did not need to submit hours for payroll, which is how he had previously requested mileage.

The employer argues they advised the claimant he did not need to submit hours because he was a salaried employee. He was not advised he did not need to continue to submit mileage through the payroll system. He could have submitted mileage with or without hours.

The claimant's argument alone is not found persuasive. He was not willing to provide any of the documentation which might show proof of his position, nor did he provide documentation to show the mileage he is claiming.

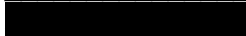
Because the claimant did not provide any documentation to show the dates and mileage claimed, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed mileage.

## **DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and RSA 279:21 VIII requires an employer to pay time and one half of an employee's regular rate of pay for all time worked in excess of forty hours and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he was an hourly employee and is owed the claimed overtime wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any employee expenses, it is hereby ruled that this portion of the Wage Claim is invalid.

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Hearing Officer

Date of Decision: April 4, 2019