

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

ROBERT TIBBETTS DBA TIBBETTS BUILDING

Case No. 61825

DECISION OF THE HEARING OFFICER

Appearances: self-represented, claimant
Nature of Dispute: RSA 275:43 I – Weekly, Unpaid Wages
Employer: Robert Tibbetts DBA Tibbetts Building – Failed to Appear
Date of Hearing: March 30, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim that was received at the Department on December 11, 2020. He asserts that he is owed \$383.00 in unpaid wages. Notice of the wage claim was forwarded to the employer on December 14, 2020. The employer did not respond. The claimant subsequently requested a hearing on the matter and hearing Notices were issued accordingly. Hearing notices were sent via first class mail and certified mail. The certified mailing Notice was signed for by the employer and the return receipt was received at the Department confirming the Notice was received. The employer was found to have proper Notice of the hearing. After waiting 15 minutes, as required by administrative rule, the hearing proceeded in the absence of the employer.

A formal hearing was held by the Department of Labor in Concord, New Hampshire on March 30, 2021 beginning at 2:30 p.m. Telephonic testimony was provided by the claimant, Mr. Mason Goodson, who was the only witness for the hearing.

FINDINGS OF FACT

25, resided in NH at the time of the hearing. Mr. is a high school graduate who completed 1.5 years of college studies in HVAC at Manchester Community College. Mr. began working for Tibbetts Building in late March 2020 as a carpenter and continued working for the employer through the end of November.

Mr. testified that after he began employment, he was advised he was considered to be an independent contractor and not an employee. He would receive a 1099 at the end of the year. Mr. also testified that he was paid on a biweekly basis for the hours that he worked and earned \$17.00 per hour. The employer picked him up in the mornings and drove him to their job site. Mr. testified that he was not responsible for the outcome of projects.

In late November 2020, Mr. [REDACTED] was offered a position with a new employer that he accepted. After receiving his \$383.00 check from Mr. Tibbetts on December 1, 2020, Mr. [REDACTED] advised Mr. Tibbetts that he would be ending his employment with him. The following day, Mr. [REDACTED] attempted to cash the check and was unable to do so; he learned that Mr. Tibbetts had put a stop payment on the check.

The employer neither appeared at the March 30, 2021 hearing nor submitted an objection or evidence to refute the claim.

Mr. [REDACTED] is requesting payment of \$383.00 for 25 hours worked from November 20, 2020 through November 30, 2020.

DISCUSSION AND CONCLUSIONS

The claimant bears the burden of proof in this matter of showing by a preponderance of the evidence that he is owed \$383 in unpaid wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

Applicable law regarding the alleged unpaid wages is New Hampshire RSA 275:43 (I), Unpaid Wages:

Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis, or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph IV or IV-a(a), on regular paydays designated in advance by the employer and at no cost to the employee.

The evidence supports that the employer issued payment to Mr. [REDACTED] in a timely manner and in accordance with RSA 275:43 (I) for the work he performed from November 20, 2020 through November 30, 2020; however, the employer then placed a stop payment on the check which negates the timely payment of wages due.

Mr. [REDACTED] testified credibly that he performed 25 hours of work for the employer from November 20, 2020 through November 30, 2020. He was provided a check for the hours worked, but the employer stopped payment. Given the claimant's credible testimony and the employer's failure to appear or provide contradictory evidence, the claimant's testimony is found to be persuasive.

The claimant is found to have met his burden of showing that he is owed unpaid wages in the amount of \$383.00.

DECISION

Based on a thorough review of the evidence and testimony presented, and as RSA 275:43 (I) requires that an employer pay all wages due to an employee, it is found that the claimant proved, by a preponderance of the evidence, that he is due unpaid wages and it is hereby ruled that **this Wage Claim is valid in the amount of \$383.00.**

The employer is hereby ordered to send a check to the Department of Labor, payable to
in the total of **\$383.00**, less applicable taxes, with a statement of such
deductions, **within thirty (30) days of the date of this Order.**



April 12, 2021
Date of Decision

Tahra White, Hearing Officer

Original: Claimant
cc: Employer

TW/cb