

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

TCH Construction Group

Case No. # 63655

DECISION OF THE HEARING OFFICER

Appearances: █ the claimant, appeared telephonically
Tammy Riggall, for the employer, appeared telephonically

Nature of Dispute: RSA 275:43 I - Weekly, Unpaid Wages
RSA 279:21 VIII - Weekly, Unpaid Wages/Overtime

Employer: TCH Construction Group

Date of Hearing: January 12, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant alleges that the employer failed to pay his wages for his employment from August 30, 2021 – September 5, 2021. The claimant asserts that he is owed a total of \$5,445.00 in unpaid wages. The claimant filed a Wage Claim at the Department of Labor on October 20, 2021. The Notice of Wage Claim was issued on October 22, 2021. The Hearing Notice date was November 19, 2021. The employer responded to the Notice of Wage Claim seeking cancellation of the hearing on December 1, 2021.

The formal hearing was scheduled at the New Hampshire Department of Labor for January 12, 2022. Prior to the hearing, the claimant and the employer requested and received permission to appear telephonically.

FINDINGS OF FACT

The claimant resides in Walnut Cove, North Carolina. The employer is based in Lumberton, North Carolina. The claimant worked as a millwright mechanic for the employer in Springfield, New Hampshire. His brothers were also employed by the employer in New Hampshire. The employer was a subcontractor to Stored Solar, LLC., a New Hampshire corporation.

The claimant received a base rate of pay, overtime and a per diem stipend during the week of August 30 – September 5, 2021. The claimant's wage claim and testimony show that he believed he was being paid \$35.00 per hour, overtime, double time on Sundays and a per diem stipend of \$135.00 per day. The claimant testified that he believed he worked 83 hours during that week.

The employer testified that the claimant was a TCH employee during the week ending September 5, 2021, was paid \$30.00 per hour, overtime at \$45.00 per hour, and a \$135.00 per diem stipend. The employer testified that double time rate only applied to emergency work outside scheduled work shifts. The employer testified that the claimant worked 80 hours that week and was owed \$3,945.00 for the week ending September 5, 2021. The claimant did not dispute the employer's testimony on those issues.

The claimant testified that after the week of September 5, he and his brothers were allowed to return to North Carolina for the birth of a child and to register a new automobile. The claimant testified that when he called TCH to return to New Hampshire, Tim Monroe of TCH told him and his brothers not to return to New Hampshire due to a dispute between TCH and Stored Solar and that he would call the claimant when it was time to return. The claimant testified he did not hear from Tim Monroe again.

The claimant testified that when he asked TCH about his pay for the week ending September 5, 2021, he was told that he hadn't been paid because Stored Solar had not paid TCH. He testified he was told this repeatedly until he filed the wage claim.

The employer testified that TCH and Stored Solar had a contractual dispute which caused Stored Solar to withhold payment from TCH. The employer testified that this was the reason TCH did not pay the claimant. The employer testified that the dispute between TCH and Stored Solar had been resolved.

The employer's objection to the wage claim included an e-mail and a document the employer claimed was "page 12 of a signed contract between TCH and Stored Solar Services, LLC." Stored Solar, LLC. is based in Tamworth, New Hampshire. The employer testified that TCH was a subcontractor to Stored Solar in New Hampshire. The page 12 document was a list of TCH employees assigned to the Stored Solar contract in New Hampshire for the weeks ending September 5 and September 12, 2021. The employer testified that TCH had 37 employees working in New Hampshire. The list was redacted to show only the claimant's name, hourly wages, per diem stipend and travel expense. The document shows \$3,500.00 in hourly wages, \$945.00 (\$135 x 7) in per diem stipend and \$770.00 for travel expense for a total of \$5,215.00.

The employer testified that these amounts were what Stored Solar was paying for the claimant's services as a TCH employee. The employer voluntarily testified that this amount, \$5,215.00, was more than the \$3,945.00 previously acknowledged as owed to the claimant. The employer testified that Stored Solar was supposed to pay the claimant that amount directly, but acknowledged that as a subcontractor, TCH was to be paid by Stored Solar and had not been, which was the reason TCH did not pay the claimant.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional 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.

RSA 275:43 I requires that an employer pay all wages due an employee, on time, on paydays designated in advance. RSA 279:21 VIII requires that an employee be paid time and one-half for all hours worked in excess of 40 in a given week.

The undisputed evidence depicts that the claimant was employed by TCH during the week ending September 5, 2021. The evidence shows what Stored Solar was paying for the claimant's hourly wages. The claimant testified he believed he was being paid \$35.00 per hour with overtime. That amount and the amount Stored Solar was paying for the claimant's hourly wages are the same ($\$35.00/\text{hr.} \times 40 = \$1,400.00$; $\$52.50/\text{hr.} (\text{time and one-half}) \times 40 = \$2,100.00$; $\$1,400.00 + \$2,100.00 = \$3,500.00$).


Those two examples in the evidence support the claimant's position regarding the amount he is owed. The employer acknowledges not paying the claimant in a timely fashion as required by New Hampshire law. A contractual dispute with a third party does not relieve the employer of the obligation to pay full wages when owed.

Given the testimony, as supported by the documentation provided, it is found that evidence and testimony was presented to meet the claimant's burden to prove by a preponderance of evidence that he is entitled to the hourly wages and per diem stipend totaling \$4,445.00.

DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee and at no cost to the employee and as the Department finds that it was proved by a preponderance of evidence, he is owed wages in the amount of \$4,445.00, it is hereby ruled that this Wage Claim is valid.

The employer is hereby ordered to send a check to this Department, payable to ██████████ in the amount of \$4,445.00, less any applicable taxes, within 30 days of the date of this Order.


James W. McClain Jr., Esq.
Hearing Officer

Date of Decision: January 25, 2022

Original: Claimant
cc: Employer's attorney

JWM/nd