

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

INDOTRONIX

CASE NO. 22-WG-00229

DECISION OF THE HEARING OFFICER

Appearances: ██████████ the claimant appeared Pro Se.

Attorney Rami Fahkoury appeared on behalf of the Employer

Nature of Dispute: RSA 279: 21 VIII - Unpaid Overtime Wages

Employer: Indotronix

Date of Hearing: December 15, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on November 7, 2022, asserting that he is due wages in the amount of \$1934.00 for unpaid overtime wages. The employer was notified by the Department of Labor (DOL) of the initial claim via letter dated November 8, 2022. The employer filed an objection on November 16, 2022 asserting the claimant had been paid properly. Following this objection, the claimant requested a hearing on the matter. A hearing was then scheduled accordingly for review of the claimant's claim for unpaid wages on December 15, 2022 at 11:00 am with the claimant appearing in person with the employer's attorney appearing via video. The hearing went forward as planned.

FINDINGS OF FACT

██████████ (Mr. ██████████) was hired by Indotronix on or about April 18, 2022. He was hired as a Data Center Administrator and paid \$53.00 per hour. He was hired for a six-month contract to perform work at BAE Systems. He was to be paid bi-weekly.

The offer letter sent to the claimant noted: "A regular workweek consists of up to forty (40) hours. Prior approval by your client manager and/or your Indotronix manager is required for any overtime hours you are going to work. Failure to obtain prior approval of overtime hours will result in those hours not being compensable at the overtime rate. Overtime will be paid in accordance with federal and state laws. Indotronix will withhold all applicable federal, state and local taxes." See page 14.

The claimant's employment agreement further noted: "Timesheets which have been approved by your manager or the client should be submitted at the end of each pay period, in accordance with the policies of Indotronix or our clients. Overtime compensation will be paid in the paycheck for the pay period subsequent to the period in which the overtime is earned." See page 17. The agreement further stated: "the regular workday could be more or less than eight (8) hours. Any specific deviations from the standard eight (8) hour workday shall be communicated to you in writing before the start of the engagement. All overtime work shall require the prior written approval of your manager... At all times during your employment, you are and shall be an 'at-will' employee. The employment relationship between you and Indotronix may be terminated by Indotronix at any time and for any reason or for no reason." See page 21.

RSA 279: 21 VIII states: "Those employees covered by the introductory paragraph of this section, with the following exceptions, shall, in addition to their regular compensation, be paid at the rate of time and one-half for all time worked in excess of 40 hours in any one week: (b) Any employee of employers covered under the provisions of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. section 201, et seq.); provided however, employers that pay any delivery drivers or sales merchandisers an overtime rate of compensation for hours worked in excess of 40 hours in any one week shall not calculate such overtime rate of compensation by the fluctuating workweek method of overtime payment under 29 C.F.R. section 778.114."

The Federal Fair Labor Standards Act (FLSA), notes that certain types of employees are exempt from mandatory overtime compensation at 1.5 times their normal rate of pay. One of those exemptions is for computer workers, and notes that a computer worker who is paid at least \$684 per week or \$27.63 per hour may not be eligible for time and a half pay for overtime. The FLSA further noted: "The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below; The employee's primary duty must consist of: 1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; 2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; 3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or 4. A combination of the aforementioned duties, the performance of which requires the same level of skills." ¹

Testimony of Mr. ██████████

Mr. ██████████ testified he was recruited via LinkedIn based on his network certifications. Mr. ██████████ testified that he understood any hours he worked over 40 must be approved by his supervisor. He further testified that he understood the approved time would be paid at 1.5 times his normal hourly rate.

¹ <https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime>

Mr. ████████ testified that when he received his first paycheck with over 40 hours worked in a week, he noticed the payrate was that same \$53 per hour no matter how many hours he worked. Mr. ████████ testified that he reached out to his supervisor Kyle Laulo (Mr. Laulo) about this and was told via e-mail on August 18, 2022: "Yes, you should get 1.5 for OT hours over 40 each week. Let us research this and get back with you". See page 6.

Mr. ████████ testified that he received another email from Mr. Laulo on August 29, 2022, which stated: "Sorry for the delay here. We are working with BAE on this issue. The reason for this is you were set up as an exempt worker, paying the same rate for all hours worked. I Hope that we can get this address[ed] this week. We will update you as soon as we have information to share from BAE." See page 6.

Mr. ████████ testified that emails such as the one sent on August 29, 2022 continued through the remaining time on his contract without resolution. Mr. ████████ further testified that if he had been told in August that Indotronix would not pay him for overtime at 1.5 times his usual rate he would have quit then. Mr. ████████ further testified that if it had been made clear to him at the beginning of the recruitment process that he would not receive the 1.5 times his usual rate for overtime he would not have accepted the job.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he is owed 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.

The claimant argued that his contract implied he was owed 1.5 times his hourly pay for hours worked in excess of 40 hours per week when such hours were approved. The claimant further argued that the overtime hours he worked were approved by his supervisor. Building on this, the claimant argued that his supervisor directly told him that his overtime hours should be compensated at 1.5 times his normal hourly rate.

The employer argued that the claimant was an exempted employee under the computer worker exemption of the FLSA. Building on this, the employer argued that under RSA 279: 21 he is therefore an exempt employee under New Hampshire law as well. The carrier further argued that the claimant was therefore correctly paid his normal hourly rate for all of the hours he worked. The employer further argued that the claimant's former supervisor has been counselled not to advise employees on salary or overtime payment. The employer finally argued that they have prevailed in court on similar fact patterns on numerous cases.

The claimant's argument that he was owed 1.5 times his hourly pay for holiday hours worked is found persuasive. The employer's argument that the FLSA exemption for computer workers should apply here would normally be found persuasive. However, in this specific case, the claimant's direct supervisor told him directly that he should be getting time and a half for all his approved overtime. See page 6. The claimant

reasonably relied on this information and had no way of knowing that his supervisor was not authorized to comment on the matter. The claimant further credibly testified that he would have left his position with Indotronix, and that he would not have taken the job in the first place. Given the claimant's reasonable reliance on his supervisor's word in this specific case, it is reasonable that he be paid for the overtime hours worked at 1.5 times his normal rate of pay.

DECISION

Based on the evidence and testimony presented, the claimant has shown by a preponderance of the evidence that he was owed overtime wages at a rate of 1.5 times his normal hourly rate for hours worked beyond 40 hours per week. The claimant's request for payment of unpaid wages is approved. It is found that the wage claim for unpaid wages is considered **valid**.

Therefore, the employer is ordered to send a check in the amount of \$1,934.00 less any applicable taxes to the DOL payable to ██████████ for the unpaid wages within 30 days of the date of this order.



Timothy G. Fischer
Hearing Officer

Date of Decision: January 10, 2022

TGF/nd