

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



V

**Mr Bults Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 | unpaid wages  
RSA 275:48 | illegal deductions

**Employer:** Mr Bults Inc, 2627 East 139<sup>th</sup> St, Burnham IL 60633

**Date of Hearing:** April 2, 2018

**Case No.:** 56763

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$6,247.00 in illegal deductions the employer took from his wages for an accidental overpayment of over \$16,000.

The employer argues the claimant signed an authorization to return an accidental overpayment of \$16,701.67 via payroll deduction, which the claimant received over the course of six months.

**FINDINGS OF FACT**

The claimant has worked for the employer since April 1, 2013, and continues to be employed with them.

For a period of approximately six months between February 2017 and August 2017, the claimant received wages for two separate job descriptions, loader operator and driver, and performed only one of the jobs. He received over \$16,000 in wages for the second job description in error.

On September 1, 2017, the employer met with the claimant to discuss the error of the accidental overpayment of \$16,000 that the claimant had received to date. The employer proposed a repayment schedule of \$167 per week. The claimant was upset, but he agreed and signed a document allowing the deduction, documentation previously submitted.

In December 2017, the claimant approached the employer because the \$167 deduction was creating a hardship. The employer agreed to reduce the deduction to \$100, as evidenced by payroll for December 11, 2017. They did not reduce the reduction in payments to writing.

At no time did the claimant tell the employer he wanted the deduction to stop.

As of the filing of the wage claim on February 5, 2018, the employer had deducted \$6,247 from the claimant's wages for the accidental overpayment.

The claimant argues now that it was the employer's mistake and he should not be responsible for their \$16,000 mistake. He seeks the \$6,247 repaid to the employer as of the date of the filling of his claim as due.

The employer argues they have a signed agreement by the claimant, and amended the agreement as requested by the claimant.

RSA 275:48 Withholding of Wages. –

I. No employer may withhold or divert any portion of an employee's wages unless:

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

(4) Voluntary payments for the recovery of accidental overpayment of wages when the following conditions are met:

(A) The recovery is agreed to in writing.

(B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.

(C) The written agreement specifies:

(i) The date the recovery of the overpayment will begin and end.

(ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in any pay period.

(iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

The claimant executed a handwritten agreement with the employer on September 1, 2017, which memorialized a \$167 weekly repayment schedule until the \$16,701.67 accidental overpayment is repaid. The parties agreed to a reduction to a \$100 weekly repayment schedule beginning December 11, 2017.

The employer has a written authorization from the claimant to deduct \$167 weekly for the repayment, as allowed by the statute. The parties agree a verbal addendum to reduce the weekly payment to \$100 occurred effective December 11, 2017.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages as he provided a written authorization to the employer for the deduction.

### **DECISION**

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 failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: April 11, 2018

Original: Claimant  
cc: Employer

MJD/nm