

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Thielsch Engineering Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I withholding of wages

Employer: Thielsch Engineering Inc, 195 Frances Ave, Cranston RI 02910

Date of Hearing: April 18, 2018

Case No.: 56816

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$1,600 in unpaid wages that the employer illegally deducted from her wages for an alleged accidental overpayment from December 2013/January 2014.

The employer denies the claimant is due any wages as she knew of the overpayment and the requirement that she pay it back. Further, she only repaid \$940.70, not the full \$1,615.38 that was actually due.

FINDINGS OF FACT

The claimant worked for the employer from September 2013 through February 2018. She was a salaried employee. The employer changed their pay period in January 2014 from monthly ending December 2013 to a biweekly pay period. For reasons not clearly explained, salaried employees received their regular monthly salary payment for December 2013. The first new pay period of January 2014 encompassed December 23, 2013 through January 5, 2014. All salaried employees were paid twice for the period of December 23 through December 31, 2013.

The claimant argues she never received any memo from the employer when the overpayment occurred and that she had no knowledge of it. She claims to have only heard of it when she had her exit interview on January 28, 2018. She later claims that everyone was overpaid the same amount pursuant to a previous letter she had from the employer.

The employer claims they notified all salaried employees via a February 7, 2014, memo, previously submitted, that they were overpaid for the period of December 23 through December 31, 2013, and that they would be required to pay back the overpayment.

RSA 275:48 Withholding of Wages allows an employer to make deductions from wages for mutually agreed upon items or accidental overpayments when the following conditions are met:

- I. No employer may withhold or divert any portion of an employee's wages unless:
 - (b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) or for any of the following:
 - (12) For any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded. The withholding shall not be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business. Nothing in this subparagraph shall prohibit a charitable organization from withholding from an employee's wages a voluntary contribution to such charitable organization.

And:

(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.

Though the claimant's argument that she was "unaware" of any overpayment in December 2013 is not found persuasive or credible, the employer is precluded from making deductions from the claimant's wages as they did not procure the documentation required by RSA 275:48 to make the deductions.

The employer did provide credible evidence that the amount deducted from her wages was \$940.70, not the claimed \$1,600.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed illegal deductions in the amount of \$940.70.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:48 I allows an employer make deductions from wages due an employee with proper authorization, and as this Department finds that the employer failed to obtain the proper authorization for the deduction for the overpayment, it is hereby ruled that the Wage Claim is valid in the amount of \$940.70.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$940.70, less any applicable taxes, within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: May 2, 2018

Original: Claimant
cc: Employer

[REDACTED]