

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Elm City Brewing Co

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal withholding of wages
RSA 275:44 IV liquidated damages

Employer: Elm City Brewing Co, 222 West St, Unit 46, Keene NH 03431

Date of Hearing: April 5, 2018

Case No.: 56817

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$480 in illegal deductions from his final pay check. He further seeks liquidated damages as he feels she was upset he left and he suffered because he did not receive his check.

At the hearing, the claimant amended his claim for wages illegally deducted from his final pay check to \$240.

The employer denies the claimant is due any wages. Due to a payroll error, the mutually agreed upon \$50 per week was not being taken out of his pay check. When he left employment, the employer deducted the amount of wages she was entitled to deduct under the written agreement, not the full amount of the outstanding loan. She did so in good faith, and was not willful and without good cause.

FINDINGS OF FACT

The claimant worked for the employer as a fry cook and cleaner until February 2018.

The parties executed a loan agreement pursuant to RSA 275:48 I (d)(3) on November 29, 2017, for a loan of \$500 payable to the employer at \$50 per week. The agreement did not contain a specific agreement that authorized the employer to deduct any outstanding balance from the claimant's final paycheck.

The employer deducted \$291.28 from his final paycheck, after paying his court ordered child support. She argues this is allowable as the written authorization from November 29, 2017, allowed her to deduct \$50 per week and the payroll company had erred and not made the authorized deductions since January 1, 2018. She had the payroll company deduct the cumulative amount she could have withheld according to the written authorization.

The claimant argues he is due \$240, after the allowable weekly \$50 deduction for the repayment of the loan he had authorized in the written agreement. He argues she cannot take the total of the payments she had missed deducting in one payment.

RSA 275:48 I (d)(3)(C) allows an employer to deduct the balance of any outstanding loans from an employee final paycheck with written authorization. The employer failed to do so. While she did have an authorization from the claimant to deduct \$50 per week for the loan, and the payroll company neglected to make the authorized deductions, she may not engage in self-help for all of the missed deductions in one check, without prior written authorization from the claimant.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed \$240.

The claimant also seeks liquidated damages.

The claimant argues the employer withheld these payments because she was mad at him for leaving. He further argues that he is due liquidated damages because he suffered as a result of not receiving this check.

The employer credibly testified that she did not willfully and without good cause withhold his wages. She withheld the amount she felt was authorized to do so by the claimant's November 29, 2017, loan agreement.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed, failed to pay, as the employer had a good faith belief she was allowed to withhold the wages.

This Decision does not discharge the debt the claimant has with the employer. The employer may have cause of action in another venue.

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 properly utilize the authorization provided by the claimant for the deduction for his loan, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$240.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$240, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 23, 2018

Original: Claimant
cc: Employer

MJD/nm