

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

The Falls Grill & Tavern, LLC

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED], Claimant
Nature of Dispute: RSA 275:43 I unpaid wages
Claimant: [REDACTED]
Employer: The Falls Grill & Tavern, LLC, 421 Central Avenue
Dover, NH 03820
Date of Hearing: May 17, 2018
Case No.: 56972

BACKGROUND AND STATEMENT OF THE ISSUES

The employer operates a restaurant and tavern. At different times the claimant worked for the employer as a server, bartender and on-site manager.

The current issue concerns worked performed by the claimant but unpaid by the employer. The claimant argues she is owed a net amount of \$923.19 in wages by the employer.

The employer did not respond to a Notice of Wage Claim.

On the basis of the claimant's assertions she is owed unpaid wages she filed a Wage Claim with the Department on March 30, 2018; a Notice of Wage Claim was forwarded to the employer on April 2, 2018. Hearing Notices were forwarded to the parties on April 26, 2018.

A formal hearing on this matter was scheduled for May 17, 2018 at the New Hampshire Department of Labor in Concord, New Hampshire. The employer did not appear for the hearing. After waiting fifteen (15) minutes with no response from the employer that he was delayed or running late, and in accordance with Lab Rule 203.04, the Hearing went forward with the testimony of the claimant.

FINDINGS OF FACT

The claimant worked for the employer from the summer of 2016 through February 7, 2017. She earned \$4.27 per hour as a server and \$6.00 as a bartender; she was eligible to receive tips.

On numerous occasions during her employment the paychecks she received from the employer were not cashable. The employer's payroll was drawn on a local bank.

The employer's payroll ran Mondays through Sunday with paydays the following Friday.

The claimant testified she was aware the owner was experiencing financial difficulties and made accommodations. The claimant learned she needed to present her paycheck at the employer's bank early on Monday mornings in order to have any hope of getting her check cashed. On multiple occasions the strategy was unsuccessful. The claimant held onto the checks that were not cashable due to insufficient funds and made additional attempts to have them cashed on later dates.

Fourteen payroll checks issued to the claimant were not cashable up to their void dates and remain outstanding. Listed below are the fourteen pay periods for which the claimant testified she has not been paid with their corresponding gross pay amounts¹.

<u>Pay Period</u>	<u>Wages Owed</u>
12/19/16 - 12/25/16	\$74.73
12/26/16 - 1/1/17	\$116.57
1/12/17 - 1/8/17	\$112.51
1/16/17 - 1/22/17	\$100.58
1/30/17 - 2/5/17	\$90.52
2/6/17 - 2/12/17	\$93.30
2/13/17 - 2/19/17	\$116.43
2/20/17 - 2/26/17	\$135.00
2/27/17 - 3/5/17	\$57.86
3/6/17 - 3/12/17	\$116.43
3/27/17 - 4/2/17	\$99.06
4/10/17 - 4/16/17	\$88.19
7/31/17 - 8/6/17	\$137.49
8/7/17 - 8/13/17	<u>\$197.08</u>
Total Wages	\$1,535.75

The employer failed to appear for the Hearing with credible testimony and evidence to refute that of the claimant.

¹ Tips are not factored in the wages owed.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she 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 states in-part that every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, ...on regular paydays designated in advance by the employer and at no cost to the employee.

This Hearing Officer finds the claimant provided credible evidence and testimony that the employer has not paid her the wages due her for the fourteen (14) pay periods she worked and designated above.

Therefore this Hearing Officer finds the claimant met her burden to prove by a preponderance of the evidence that she is owed unpaid wages in the total gross amount of \$1,536.75.

DECISION

Based on the evidence and testimony presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as the Department finds the claimant proved by a preponderance of evidence she is owed the claimed wages it is hereby ruled this Wage Claim is valid in the amount of \$1,536.75.

The employer is hereby ordered to send a check to the Department, payable to Sandra Jackson in the total of \$1,536.75 less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: June 18, 2018

Original: Claimant

Cc: The Falls Grill & Tavern, LLC, 421 Central Avenue, Dover, NH 03820
Attention: [REDACTED]

[REDACTED]