

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Dollar Tree Stores Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Dollar Tree Stores Inc, 500 Volvo Pkwy, Chesapeake VA 23320

Date of Hearing: July 24, 2018

Case No.: 57348

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$374.72 for the balance of his unpaid salary for the week ending January 20, 2018.

The employer argues they terminated the claimant for cause, and therefore it is allowable under New Hampshire statute to prorate his salary for the three days worked.

FINDINGS OF FACT

The claimant worked for the employer from January 2, 2012 through January 17, 2018, when the employer terminated his employment. He was a salaried employee.

The claimant argues he was paid for only 24 hours for the week ending January 20, 2018, which was the first week of a biweekly pay period. He argues not only did he work more than 24 hours, but he was a salaried employee and should have received his salary for the whole first week of the pay period. He seeks \$374.72 as due.

The employer argues they terminated the claimant's employment for cause after warning him that he could be terminated if his performance did not improve after the January 4, 2018, performance improvement plan. A previous district manager had provided performance improvement plans in 2017, however, he wanted to review the claimant himself, which he did by way of the signed January 4, 2018, plan. New Hampshire statute allows for his salary to be prorated for the days worked. Therefore, he has been paid all wages due.

The claimant received the most recent performance improvement plan from the employer on January 4, 2018. This warning notice him that termination was a possible outcome if he did not improve his performance.

The claimant argues that the 2017 performance improvement plans were bogus because the prior district manager forced him to sign these plans under duress, after she had made up the reports when she had not visited the store when she said she had. Further, he argues the 2018 performance plan gave him 30 days to improve and he was terminated after approximately half that time had elapsed.

RSA 275:43-b II permits an employer to prorate salary to a daily basis when a salaried employee "is terminated for cause by the employer".

The current standard for a "for cause" termination is established by Lakeshore Estates Associates LLC v Michael F. Walsh (Belknap Superior Court No. 06-E-259, April 4, 2007). The Decision sets the standard as, "articulated at 82 Am. Jur. 2D *Wrongful Discharge* § 183 (2003), which provides that an employer may dismiss an employee "for cause" if the employee engages in misconduct. An employee's misconduct must comprise reasonable grounds for termination, and the employee must have received notice, express or fairly implied, that such misconduct would be grounds for termination. 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003); see also *Lowell v U.S. Sav Bank*, 132 N.H. 719, 726 (1990) (an employer must offer an employee a proper reason for a "for cause" dismissal). In reviewing a "for cause" dismissal, "the fact finder must focus not on whether the employee actually committed misconduct, but rather on whether the employer reasonably determined it had cause to terminate." 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003)".

The Hearing Officer finds that the employer reasonably determined that it had cause to terminate the claimant when he failed to perform his job duties after being warned of impending termination in the January 4, 2018, performance improvement plan. The Hearing Officer, therefore, finds that the employer terminated the claimant "for cause" and that the claimant fails to prove by a preponderance of the evidence that he is owed any additional salary.

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 RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he was not paid all wages/salary due, it is hereby ruled the Wage Claim is invalid.

████████████████████
Hearing Officer

Date of Decision: July 26, 2018

Original: Claimant
cc: Employer