

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Jewell Transportation Resources, Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 | Unpaid Wages
RSA 275:48 Withholding of Wages, Illegal Deductions

Claimant: [REDACTED]

Employer: Jewell Transport Resources, Inc

Date of Hearing: October 30, 2018

Case No.: 57822

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant has a CDL-A license, he worked for the employer as a short-haul truck driver.

The employer is in the freight shipping and trucking business.

The current issue concerns an alleged unauthorized deduction from wages. The claimant asserts he is owed \$893.55 for an illegal deduction; the employer argues the claimant owes the company this money for his share of health insurance premiums.

On the basis of the claimant's assertions he is owed wages he filed a Wage Claim with the Department on September 7, 2018, a Notice of Wage Claim was sent to the employer on September 10, 2018. The employer's objection to the wage claim was received by the Department on September 13, 2018; on this same day a Notice of Employer's Objection was sent to the claimant. The Department received the claimant's request for a Hearing on September 24, 2018. Notices of Hearing were sent to the parties on October 10, 2018. Accordingly, a Hearing was held at the Department on October 30, 2018.

FINDINGS OF FACT

The claimant earned twenty-five (25) percent of the revenue generated from each job he drove. He was paid weekly.

The claimant began working for the company on June 12, 2017. He resigned his position; his last day of work was May 2, 2018.

As part of his compensation the claimant was offered health insurance.

The employer provides each new hire who is interested in obtaining insurance a folder containing an enrollment form, cost sheet and the carrier's pamphlet. On November 19, 2017 the claimant returned an enrollment form and met with the employer; they reviewed the form, the plan and its cost. The claimant signed the enrollment form on this date; the effective coverage date of the insurance was January 1, 2018.

On April 17, 2018 the claimant received correspondence from the employer that he owed \$894.00 for health insurance coverage. The claimant's weekly premium payments of \$59.57 had not been deducted from his wages from January 1, 2018 to approximately April 17, 2018. The employer requested he make arrangements for repayment.

The employer testified that some of the required insurance paper work for three employees that included the claimant's, was not forwarded to the payroll company. This resulted in premiums not being deducted from these employees' pay. The employer testified the error was noticed "around" April - May 2017.

The employer asked the effected employees to make arrangements to repay the premiums they paid on the employee's behalf, but not deducted from their wages.

At the end of April, 2018 the claimant informed the employer he had no intention of paying for his portion of the insurance coverage premium. His last day of work for the employer was May 2, 2018.

DISCUSSION

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he 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.

The claimant conceded he signed the health insurance enrollment form, but insisted he never saw a cost sheet for the plan he selected. He testified he couldn't remember if he asked the employer how much the plan he selected would cost. He remarked that he just needed the insurance and that's what he wanted, so he filled out and signed the enrollment form. He selected a plan the carrier refers to as "Silver." His insurance became effective January 1, 2018.

The claimant testified he did not check his earning statements after he signed up for coverage, nor did he recognize the absence of a premium being deducted from his pay. This Hearing Officer does not find his argument credible.

The claimant concludes, that by alleging he was not informed as to the cost of the insurance, the employer did not have a legitimate authorization for a monthly insurance premium deduction. This Hearing Officer disagrees. The claimant signed an enrollment form where he chose and designated a plan called "Silver." This Hearing

Officer ponders that if the claimant did not know what the plan cost, then it follows cost was not a factor in his selection of coverage plan. Then why didn't the claimant select a plan with the most comprehensive coverage? This Hearing Officer finds the claimant's argument that he was not informed as to the cost of the plan he selected not to be credible and therefore not persuasive.

RSA 275:48 states in-part that no employer may withhold or divert any portion of an employee's wages unless the employer is required or empowered to do so by state or federal law, including payroll taxes or the employer has a written authorization (emphasis this writer's) by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner. This Hearing Officer finds **the employer complied with RSA 275:48 in order to make weekly deductions of \$59.57 per week (emphasis this writer's)** by virtue of the claimant's signature on the carrier's enrollment form which included, by way of reference, a cost sheet that notified the claimant of his premium responsibility for the coverage he received.

Due to a bookkeeping error the employer's payroll company did not receive instructions to make the requisite deduction from the claimant's wages. The claimant wound up receiving health insurance coverage he did not pay for; the employer paid his premium.

Labor statute does not permit the employer to satisfy the debt they incurred on behalf of the claimant by making a deduction from the claimant's wages in the manner they did. RSA 275:48 limits employers' ability to withhold or divert employees' wages. The statute reads in part:

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

(a) The employer is required or empowered to do so by state or federal law, including payroll taxes.

(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...

(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.

This Hearing Officer finds the employer did not meet the conditions pursuant to RSA 275:48 above when they withheld \$893.55 from the claimant's wages and therefore finds there is a preponderance of evidence that the claimant is owed \$893.55.

DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:48 limits employers from withholding or diverting employee's wages to specific circumstances and as this Department finds there is a preponderance of the evidence that the claimant has not been paid all wages due, it is hereby ruled that this Wage Claim is valid in the amount of \$893.55.

The employer is hereby ordered to send a check to the Department, payable to Iain Thurston, in the total of \$893.55 less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

██████████
Hearing Officer

Date of Decision: December 6, 2018

Original: Claimant

Cc: Employer

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