

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█ █
v.

603 Diesel Performance, LLC

DECISION OF THE HEARING OFFICER

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

Claimant: █

Employer: 603 Diesel Performance █

Date of Hearing: November 6, 2018

Case No.: 57914

BACKGROUND AND STATEMENT OF THE ISSUES

The employer is in the business of diesel engine repair.

The claimant worked for the employer as a head mechanic and performed office duties.

The current issue concerns an alleged unauthorized deduction from wages. The claimant asserts he is owed \$656.25 for an illegal deduction; the employer argues the claimant failed to pay him this amount as he had promised.

On the basis of the claimant's assertions he is owed wages he filed a Wage Claim with the Department on September 25, 2018, a Notice of Wage Claim was sent to the employer on September 26, 2018. The employer's objection to the wage claim was received by the Department on October 1, 2018 and the same day a Notice of Employer's Objection was sent to the claimant. The Department received the claimant's request for a Hearing on October 9, 2018. Notices of Hearing were sent to the parties on October 17, 2018. Accordingly, a Hearing was held at the Department on November 6, 2018.

FINDINGS OF FACT

The claimant earned \$24.00 per hour and was paid biweekly.

The claimant began working for the company on June 5, 2018. He resigned his position; his last day of work was September 7, 2018.

A customer's payment in the amount of \$656.25 for a repair she had performed at the business was withdrawn by her credit card company and the \$656.25 deducted from the employer's bank account.

The customer was the claimant's sister.

At the time of the claimant's resignation the employer had yet to receive payment for the customer's repair. The employer testified the claimant gave him permission to withhold the \$656.25 from his final wages. The claimant denied this.

The employer withheld \$656.25 from the claimant's final wages.

DISCUSSION

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

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..."

This Hearing Officer finds the employer did not meet the conditions as required by RSA 275:48 above when he withheld \$656.25 from the claimant's final wages. Therefore this Hearing Officer finds there is a preponderance of evidence that the claimant is owed \$656.25.

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 \$656.25.

The employer is hereby ordered to send a check to the Department, payable to Joseph Bocchino, in the total of \$656.25 less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

Hearing Officer

Date of Decision: December 10, 2018

Original: Claimant

Cc: Employer
