

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Macomber Trucking LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 | unpaid wages
RSA 275:48 | illegal deductions

Date of Hearing: December 13, 2018

Case No.: 58049

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$923 in illegal deductions from his wages.

The employer denies the claimant is due any wages as he authorized the deductions for the personal auto repairs that he performed on the claimant's car.

FINDINGS OF FACT

The claimant worked for the employer until September 2017, when he was terminated. The employer deducted \$923 from his final wages for "personal auto repair". It appears from the documentation that the claimant worked for the employer again after this time frame.

The claimant alleges that he had an argument with the employer on the day he was terminated over these deductions coming out of his wages. He argues he told the employer not to take any deductions for the auto repairs because he had already paid him back, but the employer disagreed and took the amount of \$923 from his final wages on September 22, 2017.

The employer argues the claimant agreed to this deduction in the text message provided from June 2017. He states that he had helped the claimant out financially many times and the claimant always paid him back via payroll deduction. He provided documented examples of an earlier employee loan from May 2017 which the claimant paid back via payroll deduction and a subsequent loan in February 2018 which the claimant paid back via payroll deduction. He acknowledges the claimant texted to ask if he could take half of the payment now, sent on September 17, 2017, and half later. The employer did not respond to the text, but stated he was not going to "float" the claimant because his "credit was not good" with him. The employer did not corroborate the argument alleged by the claimant upon his termination.

The employer submitted the claimant's relevant pay stubs which show the May 2017 loan and year to date payments of the loan amount of \$1,300, the September 2017 personal auto repair deductions and year to date payments of less than the work order \$985, of \$923, and the February 2018 employee S/T loan and year to date payments of \$500.

RSA 275:48 Withholding of Wages. –

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

(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. The withholding shall not be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business. Nothing in this subparagraph shall prohibit a charitable organization from withholding from an employee's wages a voluntary contribution to such charitable organization.

The claimant's text message of approximately June 13, 2017, authorizes the employer to make the deductions for the personal auto repair. The employer ultimately took the deduction of \$923, though in reality the bill was \$985, thereby alleviating any financial advantage to the employer. There is no evidence that the claimant previously paid the employer for the personal auto repair.

The claimant's argument that he verbally changed his authorization for the employer to make deductions for the personal auto repair is not persuasive. Further, his text request on September 17, 2017, to ask the employer if he could take half of the payment now, and half later, did not rescind his June 2017 authorization for the deductions.

CONCLUSIONS

Because the claimant did not provide persuasive testimony or evidence that the employer made deductions from his wages without authorization pursuant to RSA 275:48 I, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages.

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 this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

████████████████████
Hearing Officer

Date of Decision: December 27, 2018

Original: Claimant
cc: Employer