

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████ ██████████

v.

DMT Electric & Communications, Inc.

CASE #100261

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ ██████████ Claimant
Doug Anshewitz, Employer

NATURE OF DISPUTE: RSA 275:43 I — Weekly Unpaid Wages
RSA 275:43 V Weekly, Unpaid Employee Expenses
RSA 274:44 IV – Employees Separated from Payroll
Before Pay Days, Liquidated Damages

DATE OF HEARING: February 23, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on November 27, 2021, alleging that he was owed "\$153.00 +" for 15-minute breaks he was not allowed to take. The wage claim notice was issued November 30, 2021. The claimant requested a hearing December 16, 2021 and requested that he be awarded costs and expenses for missing time from his current job while attending the hearing and liquidated damages. The hearing notice was issued December 28, 2021.

At the commencement of the hearing, the claimant attempted to add RSA 275:56 as a noticed issue for hearing. The claimant was informed that this was not a noticed issue and would not be addressed at hearing. Further, violations of RSA 275:56 are reviewed by the inspection division, not the hearings bureau, to assess whether an employer has complied with the law.

FINDINGS OF FACT

The following findings are based on the testimony of the claimant, the employer and matters of record in the Department file.

The claimant was employed for 9 ½ weeks as an electrical apprentice by the employer and was terminated from employment November 9, 2021 for failing to meet performance standards. The claimant asserts while in the employ of the employer he was not allowed to take his 15-minute breaks. He wanted to be paid for the time he should have been allowed to not work. The claimant asserts he is owed 9.25 hours of wages at \$17.00 an hour. Further, the claimant requested his expenses for pursuing this claim.

The employer denied that the claimant complained about not taking a 15-minute break. The employer asserts that the claimant was fired for cause. The employer denies that they have a policy of paying for 15-minute breaks. The employer asserts that he first learned of the 15-minute paid break issue at the time of termination.

The employer testified that his company is a time and materials contractor that works in clients' homes and offices. The employer testified that he pays his employees when they are in the shop and when they are driving in the company vehicles but does not offer paid 15-minute breaks. The employer read the break policy into the record. The break policy does not include paid 15-minute breaks. It does include a ½ hour unpaid lunch break. The employer noted that the drive time between customers is sometimes considered break time.

Upon cross-examination, the claimant noted that the employer failed to submit an objection to the wage claim. The employer acknowledged that he did not submit the signed employee handbook, time cards or personnel file.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that he was owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

RSA 275:43 I requires that an employer pay all wages due to an employee within 8 days of the expiration of the work week.

The issue in this case is whether the claimant was paid all his wages. The claimant's wage claim acknowledges that he was paid his wages; however, he asserts that he was not allowed to take his 15-minute breaks and is requesting additional wages to be paid. According to testimony from the employer, there were instances when the claimant was not allowed to take a 15-minute break at

his own discretion. However, this fact does not indicate that the claimant has demonstrated a viable wage claim.

RSA 275:30-a requires an employer to provide its employees with a ½ hour lunch/eating period if he/she works for 5 consecutive hours. The employer may require work to continue during this time if an employee can work and eat at the same time. If eating while working is not permitted the ½ hour break is unpaid. The law does not require an employer to provide its employees with a 15-minute paid break.

In this case, the claimant cannot demonstrate that his employer has not paid him in accordance with the law and is therefore unable to succeed on his request for unpaid wages.

The claimant had requested costs associated with the filing/pursuit of this wage claim. At hearing, the claimant was instructed that costs associated with the filing of a wage complaint inclusive of payment for his time/travel to hearing were not costs that could be awarded under the jurisdiction of the Department of Labor.

The costs that can be awarded under RSA 275:43 V are those costs that are associated with the employment of the claimant. For example, if the claimant was alleging unpaid mileage that accrued while in the employ of the employer that might be a cost he could have presented to the hearing officer. However, the Department of Labor has no jurisdiction to award costs associated with attending a hearing even if the claimant had been successful on his underlying wage claim.

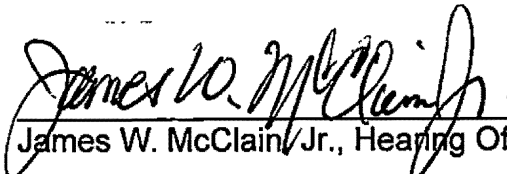
Regarding access to his personnel file, there is nothing preventing the claimant from seeking assistance from the Department of Labor's inspection division in his attempt to gain access to his personnel record. If the employer fails to adhere to the requirements of the law, the inspection division, at its discretion, can pursue enforcement of the law.

The issue of liquidated damages is moot given that the claimant was not successful on his underlying wage claim.

DECISION

The claimant has not demonstrated that he is owed unpaid wages. The wage claim is found to be **invalid**.

March 15, 2022
Date of Decision


James W. McClain Jr., Hearing Officer

JWM/cb