

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Integrity Earthworks, LLC.

Case #100498

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, failed to appear
Steve Pacsay and Toni Urquhart, representing the employer

NATURE OF DISPUTE: RSA 275:43 I — Weekly, Unpaid Wages
RSA 275:48 I — Illegal Deductions

DATE OF HEARING: March 28, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on December 15, 2021, alleging that he was owed \$405.44 in unpaid wages.

Notice of the claim was sent to the employer on December 16, 2021. The employer filed an objection on December 20, 2021 alleging that the claimant had been paid. The claimant requested a hearing January 6, 2022.

The claimant did not appear for the hearing. A review of the file indicated that the notice of hearing was mailed to the claimant at the address he provided in the original claim and was not returned to the Department as undeliverable. It was therefore determined that the claimant received adequate notice of the hearing. After waiting 15 minutes for a delayed arrival or other communication from the claimant, the hearing proceeded in his absence, consistent with administrative rule Lab 203.04.

The employer's representatives were advised that it was the claimant's burden to prove the allegations in his claim. They were further advised that employer was not required to present rebuttal evidence unless and until the claimant presented testimony or evidence in support of his claim.

FINDINGS OF FACT

The following findings are based on matters of record in the Department file.

The claimant was employed by the employer from March 2016 to December 2021. At that time the claimant was a foreman responsible for a truck and tools. The claimant asked for \$405.44 in owed wages, alleging that the employer had illegally deducted that amount from his wages for lost company tools.

The employer's objection provided a copy of the employer's tool policy signed by the claimant. The policy provides for quarterly inspection and inventory of company equipment and tools. The policy specifically authorizes payroll deductions for lost tools. The claimant signed the policy November 2, 2020. The claimant signed a payroll deduction in the amount of \$68.99 for lost tools March 23, 2021. The claimant signed the policy again March 29, 2021.

The employer inventoried the claimant's truck and equipment November 2, 2021. The employer provided contemporaneous documentation of the lost tools and damage to the claimant's company truck. The employer's safety director's February 7, 2022 affidavit, documents \$1,404.94 in lost tools and equipment and truck damage. Both parties agree the employer deducted only \$405.44 for the tools.

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 provides, in pertinent part,

I. Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis, or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis...

Because the claimant failed to appear at the hearing and offer proof to support his allegations, it is not necessary to consider whether those allegations, if credited, would have been sufficient to support the wage claim under RSA 275:43, I.

The employer's un rebutted testimony that the employer paid wages to the claimant is persuasive. In light of this testimony, the claimant failed to meet his burden of proving that he was not paid in accordance with RSA 275:43 I.

RSA 275:48 I (b)(12) provides that no employer shall withhold or divert any portion of an employee's wages unless, in pertinent part,

(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 (emphasis added).

The employer's policy was clear. The deduction did not *offset* the purchase of tools required for the claimant's job. The deduction was to *replace* tools entrusted to the claimant for the performance of the claimant's job and confers no financial advantage to the employer. The claimant did not contest the loss of the tools. The claimant clearly knew of the policy as he was subject to it on March 23, 2021 when \$68.99 for lost tools was deducted from his wages.

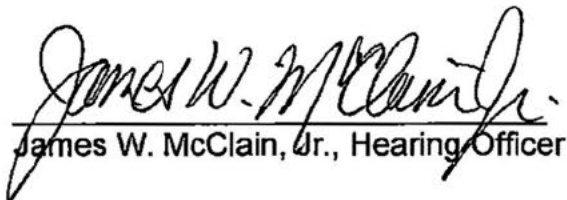
DECISION

The claimant failed to appear at the hearing and offered no evidence to support his allegations. The employer presented credible evidence that the employer paid the claimant his due wages. The employer presented credible evidence that the claimant lost the tools and had done so previously.

The wage claim is found to be **invalid**.

April 7, 2022
Date of Decision

JWM/nd


James W. McClain, Jr., Hearing Officer