

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Franconia Village Store

Case No. 100566

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] claimant
Bob Patel, employer

Nature of Dispute: RSA 275:43 I/279:21 VIII - Weekly, Unpaid Wages, Unpaid Overtime

RSA 275:48 Withholding of Wages (Added)

Date of Hearing: March 21, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages he alleges are due. Specifically, the claimant assert that he is owed wages. [REDACTED] asserts that the total amount of his claim is \$5,650.00.

[REDACTED] filed a Wage Claim with the Department on December 21, 2021. A Notice of Wage Claim was forwarded to the employer on January 21, 2022. The employer filed an objection to the claim on March 2, 2022. Accordingly, the hearing was requested March 2, 2022 and the hearing notice was dated March 3, 2022. The claimant appeared via videoconference and the employer appeared telephonically.

FINDINGS OF FACT

The claimant's December 21, 2021 wage claim asserts that claimant was employed by the employer as a store manager at the Franconia Village Store from December 14, 2020 to March 20, 2021. The claimant asserts that he worked 80 hours per week and was not paid overtime. His rate of pay was \$10.00 per hour. The overtime rate would be \$15.00 per hour. At that rate, this equates to 376 hours and 40 minutes of overtime. The claimant testified that he was paid by paychecks from the Bethlehem Village Store and that the paychecks did not cover the overtime.

The claimant testified under oath that he stole \$3,500.00 from the employer to compensate for the overtime he believed he was owed. The claimant testified that the employer caught him and agreed not to file charges as long as the claimant worked extra hours to compensate for the theft. The claimant testified that he had worked off half of the stolen funds and that the matter was now in small claims court. The claimant testified that he left the employer's employ after an altercation in which the claimant punched the employer.

The employer testified that the claimant was employed by the Bethlehem Village Store, not the Franconia Village Store. The employer testified that he had paystubs and timecards for the claimant that he failed to submit as evidence. The employer testified that he paid overtime to his employees when overtime was worked. He testified that he had paid the claimant overtime in the past. The employer testified that the store was not open 16 hours per day and that it was impossible for the claimant to have worked 16 hours per day. The employer testified that the business was small, generating \$600.00 per day in profit. The employer testified that the claimant was given a free apartment above the Franconia Village Store by the employer. The claimant testified that he paid rent. The employer testified that he complies with all New Hampshire employment laws.

DISCUSSION AND CONCLUSIONS

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

Regarding the claimant's allegation that the employer withheld \$5,650.00 in wages, the employer did not refute the allegation that the claimant was not paid his wages in compliance with New Hampshire law. The employer only questioned the number of hours worked based on the store's operating hours. The employer testified that the store was open 13 hours per day, not 16. RSA 275:43 I, requires that an employer pay all wages due an employee within 8 days of the expiration of the work week. The employer did not do so.

The employer did not refute any of the claimant's testimony, specifically those of the theft, the altercation, termination and failure to pay overtime. The employer did not refute that he recouped the money that the claimant had stolen by allowing the claimant to work off the theft by working extra hours. The employer did not refute the allegation that the claimant had paid off half of the \$3,500.00 the claimant stole.

RSA 275:48 I (d)(3) states that no employer shall withhold or divert any portion of an employee's wages without a written request from the employee provided the employer shall provide a written itemized accounting of such deductions to the employee at least once per month and has a written authorization for a lawful purpose accruing to the benefit of the employee for "[V]oluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following: (A) The time the payments will begin and end. (B) The amount to be deducted. (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment."

After reviewing the evidence and testimony, the claimant's wage claim with regards to nonpayment of wages is found to be persuasive.

In this case, the facts are undisputed that the claimant was working for the employer after the alleged theft and not receiving payment. Upon review of this arrangement, there is no written documentation of the claimant's assent to such deductions. The amount to be deducted and the date the deductions would end were not documented. Therefore, regardless of whether it was a personal loan, a pay advance or restitution, the employer is prohibited from recoupment of money via a wage deduction that was not previously agreed upon in writing. Therefore, the claimant is entitled to recoupment of the wages that were deducted by the employer. The claimant testified that this was half of the \$3,500.00.

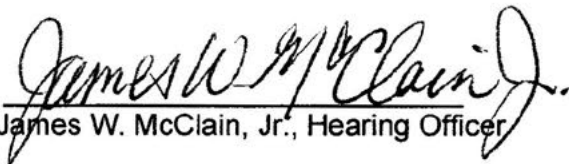
DECISION

Based on the testimony and evidence presented, this Department finds the claimant met his burden to prove by a preponderance of evidence that he is owed additional wages. It is hereby ruled that this Wage Claim is valid.

Under RSA 275:48 the taking of wages in lieu of repayment of the advance is illegal because the requirements of RSA 275:48 have not been met. The employer failed to properly document the restitution and the repayment.

The employer is ordered to send a check to this Department payable to ██████████ ██████████ in the amount of \$1,750.00, less any applicable taxes, within 30 days of the date of this order.

Date of Decision: April 1, 2022


James W. McClain, Jr., Hearing Officer

Original: Claimant
cc: Employer

JWM/nd