

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Peppercorn Farm Market & Cafe

Case #100794

DECISION OF THE HEARING OFFICER

APPEARANCES:

[REDACTED] claimant

Jonathan Sidman, claimant's witness

Hal Covert, James Napier, employer

NATURE OF DISPUTE:

RSA 275:43 I — Weekly, Unpaid Wages

RSA 275:21 VIII — Weekly, Unpaid Wages, Overtime

DATE OF HEARING:

March 22, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim against the employer on November 17, 2021, alleging that she is owed \$5,502.05 in unpaid wages and overtime for work performed between August 29, 2021 and October 2, 2021. Notice of the claim was sent to the employer on January 25, 2022. The employer responded February 11, 2022, acknowledging that the claimant was owed \$2,338.18. The claimant requested a hearing February 18, 2022. The hearing notice was issued February 28, 2022.

FINDINGS OF FACT

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

The claimant is a 23-year-old woman who resides in Franklin, New Hampshire and was employed by the employer as a bakery manager who created menus and baked goods for the employer, Peppercorn Farm and Market Café, which is based in Plymouth, New Hampshire. The employer began business operations in June 2021. The subject of the wage claim is the period between August 29, 2021 and October 2, 2021. The claimant resigned from the employer on November 17, 2021 and filed her wage claim the same day. The employer's response indicates that the claimant resigned "[W]hen her Partner was terminated from his position for intentionally gaining unauthorized access to restricted areas of the internal computer system, she voluntarily packed her things and quit on November 17, 2021. She did so quietly and respectfully.

No Termination (sic) letter was written, as it was felt none was needed" (emphasis added).

The claimant testified that she was paid \$17.00 per hour by check and that she was supposed to be paid weekly but the checks arrived at irregular intervals. The claimant also testified that some pay checks bounced.

The claimant and the employer agree that the claimant is owed back pay. The claimant alleges she is owed \$3,380.45 for 198.85 hours at \$17.00 per hour and \$2,121.60 for 83.2 hours at \$25.50 per hour for a total of \$5,502.45. The employer alleges the claimant worked 200 hours at \$17.00 per hour for a total of \$3,400.00 in straight time and 71.86 hours at \$25.50 per hour for a total of \$1,832.43 in overtime and a grand total of \$5,232.43. The difference between the calculations is \$270.02.

The employer's February 11, 2022 response contained documentation of \$1,894.25 in payment to the claimant via two company checks dated September 13 and September 26, 2021. The employer's response and testimony also indicate that the claimant was paid \$1,000.00 in cash in September. The claimant and the claimant's witness confirmed the cash payment to the claimant in testimony, stating that the payment was split between them. Therefore, the claimant was paid \$2,894.25 by the employer in September 2021. The claimant's wage claim did not acknowledge these payments.

The employer's response references a summary letter that was not attached to the response. The response states that a "summary letter was sent to Ms. Pixley attempting to address the gross back pay owed, including lump sum payments, minus any Federal taxes that had not been withheld from her earnings from 6/30 – 10/2. This calculation had the correct hours, including the time error on 9/2. We erroneously put his (sic) entire earnings into the payroll system, which generated too much federal tax. We regret the error on our part".

A copy of the summary letter was submitted by the claimant prior to the hearing. The summary letter is undated. The summary letter calculated the claimant's hours and earnings from June 1, 2021 to October 2, 2021 and from August 29, 2021 to October 2, 2021. The summary letter uses the claimant's calculation of hours above and acknowledges that the claimant's gross earnings were \$5,502.05 for the time period covered by the claimant's wage claim. The letter calculates the *estimated* taxes due as \$2,233.46, which the employer has acknowledged above as erroneous.

The letter also states that the claimant received \$1,560.00 in gross pay during the period in question. That figure was not disputed by the claimant and was not acknowledged in her wage claim. However, the employer offered no documentation to substantiate those payments. Under the terms of the letter, the employer acknowledged that \$3,942.05 in gross pay is owed to the claimant, after deducting \$1,560.00. However, the letter then deducts the erroneous *estimated* tax calculation of \$2,233.46 from that figure for a net amount of \$1,708.59 owed to the claimant.

The employer attempted to submit a spreadsheet at the hearing that was stated to be a record of all payments to the claimant from May 28, 2021 to October 7, 2021. The spreadsheet was accepted by the hearing officer. The spreadsheet does not indicate whether the payments were net or gross wages. The spreadsheet states that

\$2,814.59 is owed to the claimant. The employer testified that figure does not include the \$1,000.00 cash payment to the claimant and that \$1,814.59 is owed to the claimant. The employer offered no testimony or evidence to substantiate that statement. The employer offered no testimony or evidence as to whether that figure was net or gross pay.

The claimant attempted to introduce documentation at the hearing that had been previously rejected by the Department's Hearings Administrator. The majority of the documentation was not relevant to the time period of the wage claim and was not considered by the hearing officer.

The employer testified that as a new business he did have liquidity issues at the time in question and that those issues have been resolved. The employer expressed willingness to abide by New Hampshire employment law. The claimant testified that she was not seeking liquidated damages.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that she is 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 an employee within 8 days of the expiration of the work week. RSA 275:43-b requires that a salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked.

The claimant credibly testified that she was a salaried employee and was not paid her wages as required under the law. The employer credibly testified that he owed the claimant back pay and had made partial payment to the claimant.

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...

The employer has offered three different figures as back pay owed to the claimant. The first figure is \$1,708.59 based on \$3,942.05 net pay owed but that is acknowledged to be inaccurate by the employer because the *estimated* tax deduction of \$2,233.46 is too high. The second is \$2,338.18 and the third is \$2,814.59. The \$2,338.18 figure is based on deducting the \$2,894.25 that both parties agree was paid to the claimant.

The \$2,814.59 figure is based on all payments the employer made to the claimant from May 28, 2021 to October 7, 2021. The spreadsheet shows the checks paid to the claimant in September 2021 in the amount of \$1,894.25. It is unknown as to why the employer did not show the universally acknowledged \$1,000.00 cash payment on the spreadsheet.


However, both parties agree that \$5,502.45 is the gross amount of wages the claimant is owed. Both parties agree the claimant was paid \$2,894.25. Therefore, the claimant is owed \$2,608.20 in back pay.

DECISION

Based on the testimony and evidence presented, this Department finds the claimant met her burden to prove by a preponderance of evidence that she is owed additional wages. It is hereby ruled that this Wage Claim is **valid**. The claimant is entitled to \$2,608.20 in unpaid wages.

The employer is ordered to send a check in the amount of \$2,608.20 to this Department payable to ██████████ less any applicable taxes, for the unpaid wages. The check is to be submitted to this Department within 30 days of the date of this order.

April 1, 2022
Date of Decision


James W. McClain Jr., Hearing Officer

JWM/nd