

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

First Student

CASE #101104

DECISION OF THE HEARING OFFICER

APPEARANCES:

██████████ – Claimant, telephonically

Shawn Prendable - Employer location manager

Becky Fellerhoff – Employer corporate HR business partner

NATURE OF DISPUTE:

RSA 275:43 I — Weekly, Unpaid Wages

DATE OF HEARING:

April 13, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on February 7, 2022, alleging that he was owed \$51.00 in unpaid wages. Notice of the claim was sent to the employer on February 16, 2022. The employer did not respond. The claimant requested the hearing March 14, 2022. The hearing notice was issued March 15, 2022.

Specifically, the claimant alleged he was told to report to work three hours early and requests compensation for that time.

FINDINGS OF FACT

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

The claimant is a 47-year-old man who resides in Hudson, New Hampshire. The employer is a student transportation service based in Nashua, New Hampshire. The claimant testified that he was employed by the employer as a full-time bus driver at a wage of \$25.50 per hour. The \$51.00 claim represents two hours wages.

The wage claim reads, in relevant part, “[W]as asked to report at 0745 on 27 Nov 2021 by Disp. Jenny Dion. when (sic) I arrived found out I was given wrong time and was *three hours early*... Not paid for showing up at employers (sic) request. I filed payroll discrepancy and it was ignored” (emphasis added).

At the hearing, the claimant testified that he arrived at 7:30 and was asked by the dispatcher why he was there and was told by the dispatcher that he was *two hours early*. The claimant testified he knew he was correct regarding the time because he wrote it down, therefore it had to be accurate.

The employer testified that the claimant was scheduled for 9:30 am on November 27, 2021. The employer testified that other drivers were scheduled for 9:30 am that day and had reported at the correct time. The employer testified that the claimant did not put the claim for the two hours on his time sheet but tried to negotiate the two hours' pay a month later. The claimant submitted e-mails corroborating that testimony. In those e-mails, the claimant acknowledged that the employer had overpaid him a half day for earned time.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that he 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 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...

In this matter the claimant credibly testified that he is employed by the employer. However, his written and verbal testimony that he was *told* to report to work three and/or two hours early is not credible. The claimant variously testified that he was to report for work at 0745 on November and was three hours early and that he arrived at work at 7:30 November 27, 2021 and was told he was two hours early. The employer credibly testified that the claimant was scheduled to report at 9:30. The employer's testimony is corroborated by the claimant's testimony of what occurred when he reported for work at 7:30 am on November 27, 2021.

The claimant seeks \$51.00 in compensation, which he testified was equivalent to two hours' wages. Therefore, it is found that it is more likely than not that the claimant was to report for work at 9:30 and that the claimant was two hours early.

DECISION

Based on the testimony and evidence presented, this Department finds the claimant has not 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 **invalid**.

April 26, 2022
Date of Decision


James W. McClain, Jr., Hearing Officer

JWM/nd