

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]  
v.

Mudz NH, LLC. d/b/a Gloria Jean's Gourmet Coffee

Case No. 101768

**DECISION OF THE HEARING OFFICER**

**APPEARANCES:** [REDACTED] claimant  
Employer did not appear

**NATURE OF DISPUTE:** RSA 275:43 I - Weekly, Unpaid Wages  
RSA 275:44 IV – Employees Separated from Payroll  
Before Pay Days, Liquidated Damages

**DATE OF HEARING:** August 22, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a wage claim on April 7, 2022, alleging that she was owed \$792.68 in unpaid wages. Specifically the claimant seeks unpaid wages and gratuities for three biweekly pay periods from February 28, 2022 to April 1, 2022 and an equivalent amount in liquidated damages. The hearing was originally scheduled for June 22, 2022. The claimant did not appear for the hearing because the claimant had requested a telephonic hearing. After a show cause letter was issued the hearing was rescheduled for August 22, 2022.

Prior to the scheduling of this matter Gloria Jean's Gourmet Coffee Corp. filed a notice with the Department of Labor that the claimant was employed by Mudz NH, LLC. Mudz NH, LLC. was provided notice of the August 22, 2022 hearing. The employer did not appear for the rescheduled hearing. A review of the file indicated that the notice of hearing was mailed to the employer at the address the claimant provided in the original claim and was not returned to the Department as undeliverable. It was therefore determined that the employer received adequate notice of the hearing. After waiting 15 minutes for a delayed arrival or other communication from the employer, the hearing proceeded in their absence, consistent with administrative rule Lab 203.04.

**FINDINGS OF FACT**

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

The claimant asked for \$792.68 in owed wages. The claimant's wage claim is for 36.31 hours at \$14.00 per hour, or \$508.34, and estimated gratuities in the amount of

\$270.00. The total of the wages and gratuities is \$778.34. There is a discrepancy between the stated amount of the wage claim and the arithmetic.

The wage claim covers the pay periods February 28, 2022 to March 13, 2022, March 14 to March 27, 2022 and March 28 to April 1, 2022. The claimant was terminated from employment on April 2, 2022 for failing to report to work on April 1, 2022 over the wage dispute.

The claimant alleged she is owed an estimated \$170.00 in gratuities for the period ending March 13, 2022, wages for 21.39 hours, or \$299.46, for the period ending March 27, 2022 and wages for 14.92 hours, or \$208.88 and an estimated \$100.00 in gratuities for the pay period ending April 1, 2022. The total of the wages and gratuities is \$778.34.

The claimant testified the employer required employees to use a "Homebase" application on workforce.intuit.com to track hours. Screen shots of the claimant's hours, scheduled earnings and paychecks were submitted into evidence.

The claimant did not allege she was owed gratuities for the period ending March 27, 2022. However, the claimant submitted a check for \$238.22 on April 5, 2022 for gratuities earned in the period of March 14 to March 27, 2022. The claimant testified she received a check for \$417.24 on April 15, 2022 for 34.74 hours worked in the period of March 14 to March 27, 2022. The claimant was previously paid 13.35 hours for the period March 14 to March 27, 2022 on April 1, 2022.

The claimant testified she has not been paid for the period from March 28 to April 1, 2022 and has not had any contact with the employer since receiving the April 15, 2022 check. Between the two checks the claimant was paid \$655.46 by the employer since filing the wage claim.

### **DISCUSSION AND CONCLUSIONS**

The claimant had the burden of proving by a preponderance of the evidence that she 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).

The claimant alleged she is owed \$170.00 in estimated gratuities for the period ending March 13, 2022 and \$100.00 in estimated gratuities for the period ending April 1, 2022. The claimant alleged she is owed wages for 21.39 hours, or \$299.46, for the period ending March 27, 2022 and wages for 14.92 hours, or \$208.88 for the pay period ending April 1, 2022.

The total of the allegedly owed wages and gratuities is \$778.34. The claimant received two payments from the employer after filing her wage claim. Between the two checks the claimant was paid \$655.46 by the employer since filing the wage claim.



Regarding unpaid wages and gratuities, RSA 275:43 I provides in pertinent part, "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 claimant did not allege she was owed gratuities for the period ending March 27, 2022. However, the claimant submitted a payment for \$238.22 dated April 5, 2022 for gratuities earned in the period of March 14 to March 27, 2022. That payment was timely under RSA 275:43 I.

The claimant also received a payment of \$417.24 on April 15, 2022 for 34.74 hours worked in the period of March 14 to March 27, 2022. That payment was not timely under RSA 275:43 I. However, the claimant was previously paid 13.35 hours for the period March 14 to March 27, 2022 on April 1, 2022, which was timely. Therefore the claimant was overpaid 13.35 hours for the period of March 14 to March 27, 2022.

The claimant alleged she is owed wages for 14.92 hours, or \$208.88 for the pay period ending April 1, 2022. In this case the overpaid 13.35 hours for the period of March 14 to March 27, 2022 are credited to the 14.92 hours owed for the period of March 28 to April 1, 2022.

The claimant is owed 1.57 hours in wages, or \$21.98 before taxes. The claimant is also owed \$270.00 in gratuities, \$170.00 for the pay period ending March 13, 2022 and \$100 for the period ending April 1, 2022. The claimant is owed wages and gratuities in the amount of \$291.98.

Regarding liquidated damages, RSA 275:44 IV provides in pertinent part,

"I. Whenever an employer discharges an employee, the employer shall pay the employee's wages in full within 72 hours..."

IV. If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day...or in an amount equal to the unpaid wages, whichever is smaller;"

In this case the claimant is owed 1.57 hours in wages, or \$21.98 before taxes, and \$270.00 in gratuities for a total of \$291.98. Based on the testimony and evidence presented, as RSA 275:44 IV requires that an employer pay all wages due a discharged employee within 72 hours, this Department finds that the claimant proved by a preponderance of the evidence that she was not paid her full wages. The claimant is entitled to liquidated damages on that amount.

However, the claimant also submitted a payment for \$238.22 dated April 5, 2022 for gratuities earned in the period of March 14 to March 27, 2022. That payment was timely under RSA 275:44 IV. The claimant is not entitled to liquidated damages on that amount.

The claimant also received a payment of \$417.24 on April 15, 2022 for 34.74 hours worked in the period of March 14 to March 27, 2022. That payment was not timely under RSA 275:44 IV. The claimant is entitled to liquidated damages on that amount.

The claimant is entitled to liquidated damages in the amount of \$291.98 equivalent to the wages and gratuities that were not timely paid for the pay periods ending March 13 and April 1, 2022. The claimant is entitled to liquidated damages in the amount of \$417.24 equivalent to the wages that were not timely paid for the pay period ending March 27, 2022.

It is found the claimant is entitled to \$709.22 in liquidated damages.

### DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, this Department finds that the claimant proved by a preponderance of the evidence that she was not paid her full wages in the amount of \$291.98.

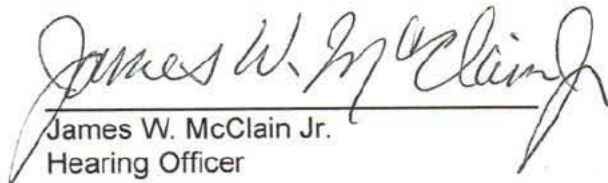
Based on the testimony and evidence presented, it is found that the employer willfully and without good cause failed to pay the claimant within 72 hours as required under RSA 275:44 IV and as such is required to pay liquidated damages in the amount of \$709.22.

It is hereby ruled that the Wage Claim is **valid in the amount of \$1,001.20**

The employer is hereby ordered to send two checks to this Department, payable to ██████████. One in the total of \$291.98 for the unpaid wages, less any applicable taxes, with a statement of such deductions within 30 days of the date of this Order. The second check will be in the amount of \$709.22 for the liquidated damages, within 30 days of the date of this Order.

September 15, 2022  
Date of Decision

JWM/nd

  
James W. McClain Jr.  
Hearing Officer