

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Trahans Cleaning LLC

Case No. 102011

DECISION OF THE HEARING OFFICER

**Appearances:** [REDACTED] claimant, failed to appear

Michelle Wheeler, for employer, telephonically

**Nature of Dispute:** RSA 275:43 I -- Weekly, Unpaid Wages

**Date of Hearing:** June 1, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages she alleges are due. Specifically, the claimant assert that she is owed wages in the amount of \$745.00.

The claimant filed a Wage Claim with the Department on April 20, 2022. A Notice of Wage Claim was forwarded to the employer on April 25, 2022. The employer filed an objection May 2, 2022. The claimant requested a hearing the same day. The hearing notice was dated May 2, 2022, and a hearing was scheduled accordingly.

Despite having proper notice, the claimant did not appear for the scheduled hearing. The day prior to the hearing, the claimant e-mailed the Department to submit evidence telephonically that had not been shared with the employer. The claimant also asked to appear telephonically but did not make a formal request to the hearings bureau. The claimant was informed that the evidence may not be accepted by the hearing officer due to its late submission. At the time of hearing the hearing officer called the claimant at the number she provided. The claimant did not answer. The outgoing message indicated the number was not in service. After waiting fifteen minutes pursuant to Lab Rule 203.04, the hearing officer tried the number again with the same result. The hearing proceeded in the claimant's absence.

The employer's representative was informed that the burden of proof in the claim remained with the claimant, despite her failure to appear. The employer's representative

was informed that she was under no obligation to provide testimony. The employer's representative declined to testify.

### FINDINGS OF FACT

The wage claim asserts that the claimant was employed as a cleaner with Trahans Cleaning LLC in April 2022 and is owed \$52.00 in wages for the week ending April 6, 2022, \$369.00 in wages for the week ending April 13, 2022, and \$315.00 for the week ending April 20, 2022. The total is \$736.00, not \$745.00 as alleged in the wage claim. The claimant was terminated from employment April 19, 2022, and filed her wage claim the next day.

The employer submitted evidence on May 2, 2022, documenting checks paid to the claimant for the weeks ending January 5, 2022, through April 20, 2022. The checks show that the claimant worked 30.55 hours during the week ended April 6, 2022, for gross pay of \$458.25 minus \$89.46 in taxes with net pay of \$368.79. The checks show that the claimant worked 4.5 hours during the week ended April 13, 2022, for gross pay of \$67.50 minus \$25.34 in taxes with net pay of \$42.16. The checks show that the claimant worked 35 hours during the week ended April 20, 2022, for gross pay of \$525.00 minus \$104.81 in taxes with net pay of \$420.19. This paycheck shows a deduction of \$420.00 for "Advanced PTO" and leaves the claimant with actual net pay of \$.19.

The payroll records from January 5 to March 29, 2022, show that the claimant used 75 hours of PTO during that period. The employer's submittal reads that the employer's paid time off policy allows for a yearly accrual maximum of 120 hours and that the claimant was allowed to use more PTO than she had earned. The employer's submittal reads that the employer assumed that the negative PTO balance would be rectified over the calendar year, that the claimant refused to use the mandated time clock, the claimant refused to report to work and her departure from the employer was voluntary.

### DISCUSSION AND CONCLUSIONS

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

The claimant's allegation that the employer withheld \$745.00 in wages is not supported in the documentation or the claimant's wage claim or the employer's exhibits. The documentation indicates that the claimant was paid correctly for the weeks ending April 6 and 13, 2022. However, 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 for the week ending April 20, 2022. The employer recouped some of the advanced PTO by taking the claimant's last paycheck for the week ending April 20, 2022.

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.”

There is no written documentation of the claimant's assent to such deductions. Therefore, the employer is prohibited from recoupment of advanced PTO via a wage deduction that was not previously agreed upon.

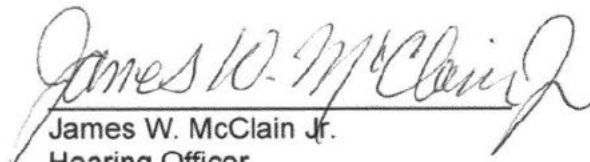
After reviewing the evidence and testimony, the claimant's wage claim with regards to nonpayment of wages is found to be persuasive.

**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 in part. For the week ending April 20<sup>th</sup>, the employer improperly recouped PTO without permission. The claimant is entitled to her wages earned during this pay period.

The employer is ordered to send a check to this Department payable to ██████████ in the amount of \$420.00 within 30 days of the date of this order.

June 23, 2022  
Date of Decision

  
James W. McClain Jr.  
Hearing Officer

Original:            Claimant  
cc:                    Employer

JWM/sf