

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████

v.

Trophy Lawns, LLC.

Case No. 102194

DECISION OF THE HEARING OFFICER

Appearances: Mark Edgecomb, Employer
██████████ the claimant

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

Date of Hearing: June 20, 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 in the amount of \$473.00.

Mr. ██████████ filed a Wage Claim with the Department on May 3, 2022. The Wage Claim Notice issued May 5, 2022. The employer filed an objection to the claim on May 13, 2022. The claimant requested a hearing on the contested wages May 16, 2022. Accordingly, the hearing notice issued May 25, 2022.

FINDINGS OF FACT

The claimant was employed by the employer as a landscaper for three years. The wage claim and testimony were that the claimant resigned from employment on April 29, 2022 after what the claimant testified was the employer's harassment over the claimant's "covid" related absence from work. The claimant missed the work week of April 25 - 29, 2022 and resigned on the 29th.

The claimant testified that his wage claim was for his direct deposit wages for the week ending April 22, 2022, which he initially received on April 29, 2022. The wage claim and testimony were that the employer reversed the claimant's April 29, 2022 direct deposit after he resigned.

The employer testified that he did indeed reverse the claimant's direct deposit of April 29, 2022. The employer testified he did so because he had heard variously that the claimant did not have "covid", was working for another landscaper and because the claimant owed him \$2,406.89 in reimbursement for bail, lawyer fees, car payments and living expenses. The employer testified that the claimant had paid approximately half of what was owed. The employer testified that he has a court action pending against the claimant to recover the money.

The employer testified that there were text messages between he and the claimant in which the claimant acknowledges the debt. The claimant did not deny that he owed the employer money. The claimant testified that there was no written agreement between them whereby the employer could seize the claimant's wages. The employer did not refute that testimony.

The employer did not refute any of the claimant's allegations, specifically those of reversing the direct deposit and the lack of a written agreement for recoupment of loans by seizing wages. The employer did not refute that he recouped the money that the claimant was loaned by taking the claimant's last paycheck. There was no documentation of termination for cause as the claimant resigned.

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 \$473.00 in wages, the employer did not refute the allegation that he reversed the claimant's direct deposit. 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.

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, regardless of whether it was a personal loan or a pay advance, the employer is prohibited from recoupment of lent money via a wage deduction that was not previously agreed upon.

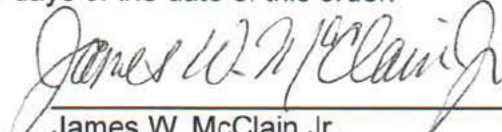
After reviewing the evidence and testimony, the claimant's wage claim with regards to nonpayment of wages is found to be persuasive.

DECISION

Based on the testimony and evidence presented, this Department finds the claimant met 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 pay advance and the repayment.

The employer is ordered to send a check to this Department payable to ██████████ in the amount of \$473.00 within 30 days of the date of this order.


James W. McClain Jr.
Hearing Officer

Date of Decision: July 19, 2022

Original: Claimant
cc: Employer

JWM/nd