

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Jake Kaplan's of Rochester

Case No. 102255

DECISION OF THE HEARING OFFICER

**Appearances:** [REDACTED] Claimant  
Michael Collins, for Employer

**Nature of Dispute:** RSA 275:43 I - Weekly, Unpaid Bonus - REMOVED  
RSA 275:43-b - Weekly, Unpaid Salary

**Date of Hearing:** June 21, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages she alleged are due. Specifically, the claimant assert that she is owed \$600.00 in unpaid salary. The employer disputes that the claimant is owed wages.

The Wage Claim was filed May 6, 2022. The employer's objection to the claim was received by the Department on May 17, 2022. The hearing notice issued May 25, 2022.

Prior to the commencement of the hearings, the parties agreed that the claimant had been paid a \$10,816.77 bonus on May 3, 2022. The parties agreed to remove the issue from consideration. Therefore, RSA 275:43 I was removed from the noticed issues.

FINDINGS OF FACT

The claimant was employed by the employer as an office manager at the employer's auto dealership for 5 months, when she was terminated due to consolidation of employees and elimination of her position. Both parties agreed the claimant was not terminated for cause and did not resign. The claimant was terminated on Tuesday April 26, 2022. She had been employed by the dealership's prior owners for over 22 years. The claimant's salary was \$1,000.00 per week. She was paid weekly by direct deposit.

The wage claim and testimony were that the claimant did not receive her last complete salary paycheck on May 6, 2022 as expected. She testified that her paycheck was prorated to reflect that she was paid for Monday April 25 and Tuesday, April 26, 2022 and not the entire week as required under RSA 275:43-b. Therefore, she filed her wage claim.

The employer acknowledged he prorated the claimant's last paycheck, stating he does so every time an employee is separated. The employer testified that he did not know that salaried employees must be paid their full salary in this case. The employer testified that he would pay the claimant if directed to do so by the Department.

At this point the hearing was concluded.

### 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 parties agree on the facts of this case. The claimant and the employer acknowledge that the claimant was not paid their last week's full wages. The claimant was a salaried employee. She was paid weekly and grossed the same amount each pay period. She was not terminated for cause.

The law required that unless fired for cause, a salaried employee shall be paid her entire salary for any work week where she performs any work. In this case, it is found that the work week began on April 25, 2022. The claimant worked April 25 and 26, 2022, when she was terminated. Given that the employer has not demonstrated that there was an exception for payment of the salary as outlined by RSA 275:43-b, the employer must pay the claimant her last week of salary for the partial week worked prior to her termination.

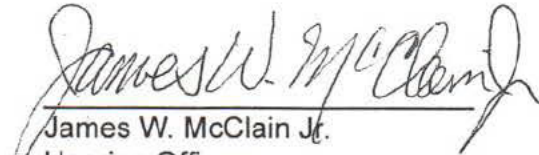
The Department finds that the claimant has proven by a preponderance of the evidence that she was not paid the salary she is owed. RSA 275:43 I requires that an employer pay all wages due an employee within 8 days of the expiration of the work week. RSA 275:43-b requires that a salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked.

### DECISION

Based on the testimony and evidence presented, this Department finds the claimants 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 employer is ordered to send a check to this Department payable to ██████████ in the amount of \$600.00, less any applicable taxes, within 30 days of the date of this order.

Date of Decision: July 19, 2022

  
James W. McClain Jr.  
Hearing Officer

Original: Claimant  
cc: Employer

JWM/nd