

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

CSTK HOLDINGS, INC.

CASE NO. 102256

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] the claimant appeared Pro Se.

Chris Pendleton, the owner, appeared on behalf of the employer

Nature of Dispute: RSA 275:43 I - Weekly, Unpaid Wages
RSA 275:43-b – Payment of Salaried Employees, Unpaid Salary

Witnesses: Ms. [REDACTED] the claimant
Mr. Pendleton, the owner
Peter Sullivan, general manager for the employer.

Employer: CSTK Holdings, Inc.

Date of Hearing: August 15, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on May 8, 2022, asserting that she is due wages in the amount of \$526.52 for unpaid net salary.

The employer was notified by the Department of Labor (DOL) and filed an objection to the claim on March 24, 2022. A hearing was then scheduled accordingly for review of the claimant's claim for unpaid wages on June 28, 2022 at 9:45 am. Neither party appeared for this hearing. Hearing Officer McClain sent a letter dated July 29, 2022 indicating that the claimant needed to show good cause for her failure to attend the scheduled hearing. On July 19, 2022 the claimant reached out to the DOL and explained that she was having an issue with her mail and had not received the initial hearing notice or Hearing Officer McClain's letter. Hearings Administrator Fuller determined that this was good cause for not appearing at the July 19, 2022 hearing. The hearing was then rescheduled for August 15, 2022 at 8:30 am. The hearing was held with all parties present at the DOL offices.

FINDINGS OF FACT

██████████ is a 29-year-old who was employed by CSTK Holdings at their 7-Eleven store 32498 in Raymond, New Hampshire from August 20, 2021 through April 29, 2022. She was hired as a cashier and was eventually promoted to a store manager as of November 15, 2021.

Once she became a manager, she was paid a gross salary of \$750 per week. She was paid weekly, and the pay period ran from Friday to Thursday. Mr. Pendleton indicated that Ms. ██████████ was given the promotion due to her previous performance, as well as her availability. Mr. Pendleton specifically stated that Ms. ██████████ was one of the best employees he ever had regarding customer service. However, he did not believe her to be a good manager or trainer. Mr. Pendleton also alleged that other employees of the store quit their jobs due to conflicts with Ms. ██████████

Mr. Pendleton submitted screen shots of group text messages which included Ms. ██████████ Mr. Sullivan, and another employee named Krystin (identified as the co-manager of store 32498). These text messages indicate that Mr. Pendleton wanted his salaried employees to be punching in more often than they were. *See page E4.* The screen shots further noted that all the employees in this group were considered full time and were expected to work an average of 40 hours per week minimum. *See page E5.* ██████████ response indicated that she felt the requirement to work 40 hours at minimum without a raise was not reasonable. She also informed Mr. Pendleton of a need to get a second job to meet her living expenses. *See page E7.*

Mr. Pendleton further submitted screen shots of a text message received on April 29, 2022 from Ms. ██████████. The topic of this text message was a raise that had allegedly been discussed between the parties when Ms. ██████████ moved up to her position as a manager. There is an implication that Mr. Pendleton was going to have Peter Sullivan do a performance review before putting any raise into place. *See page E1.*

The claimant was terminated on April 29, 2022. On the date of her termination, the claimant was paid \$636.48. This represented her pay for the previous pay period and was noted to be her "last paycheck" on her termination letter. *See page C1.* Her termination letter stated: "This notice is to inform you that effective upon the receipt of this letter your position at 7-Eleven 32498 has been eliminated, as the position is no longer financially viable for either party." *See page C1.* The claimant was paid for the shift she worked on April 29, 2022 within 72 hours of her termination as required.

Testimony of Peter Sullivan:

Mr. Sullivan has been employed by CSTK Holdings for about ten years. He is currently a general manager for multiple locations. He testified that he did not agree with Mr. Pendleton's evaluation of Ms. ██████████ customer service abilities. He believed that Ms. ██████████ was responsible for "drama" at the store.

When asked for an example Mr. Sullivan, pointed to the text exchange sent to himself and Mr. Pendleton from an employee named Brianna when she quit. Brianna

had a sensitive medical issue occur. However, she did not explain this when she called out of work, instead she indicated that she could not work because her mother had tested positive for COVID. Mr. Sullivan conceded that this was a pattern with Brianna who was a new hire at the time. He also admitted that his problem was not with Ms. Sloan's frustration with Brianna's behavior, but rather the way it was dealt with.

Mr. Sullivan testified that the company does not have a set policy for when employee performance reviews are completed. He explained that an employee may be reviewed when their performance has been exceptionally poor, or exceptionally good. Additionally, Mr. Sullivan noted that reviews will sometimes be conducted at the employees request.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she is owed unpaid 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 argued that she was a salaried employee. The claimant further argued that she worked during a portion of a pay period for which she was not paid. The claimant further argued that per the letter presented to her by the employer, she was not terminated for cause. Finally, the claimant argued that based on RSA 275:43-b she is entitled to her full pay for the final pay period, not a prorated amount.

The employer argued that this hearing should not have gone forward as the claimant responded to Hearing Officer McClain's letter four days late. The employer further argued that the claimant was terminated for cause. Building on this, the employer argued that Mr. Sullivan's testimony supports the claimant's termination for cause. The employer further argued that the claimant's text messages also support that she was terminated for cause.

The claimant's argument that per the letter presented to her by the employer, she was not terminated for cause is persuasive. RSA 275:43-b II states: "Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer." In this case, the employer provided no evidence that the claimant was ever disciplined for poor performance. Additionally, the claimant was terminated following her text message once again asking about a promised raise. *See page E1*. Furthermore, the termination letter provided to the claimant indicated: "This notice is to inform you that effective upon the receipt of this letter **your position at 7-Eleven 32498 has been eliminated**, as the position is **no longer financially viable for either party**." (Emphasis added.) *See page C1*. This evidence taken together reasonably indicate that the employer was terminating the claimant for financial concerns and not because of her performance issues.


The claimant's argument that she worked during a portion of a pay period for which she was not paid is also persuasive. RSA 275:43-b I states in part: "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." (Emphasis added.) The employer's pay periods ran Friday to Thursday. The claimant was terminated at the end of her full shift on Friday April 29, 2022. The claimant was paid a pro-rated portion of her salary for that shift only. Therefore the claimant is owed the remaining portion of her normal salary for the pay period of April 29, 2022 through May 5, 2022.

DECISION

Based on the evidence and testimony presented, the claimant has showed by a preponderance of the evidence that net wages were due for \$526.52. The claimant's request for payment of unpaid wages is approved. It is found that the wage claim for unpaid wages is valid.

Therefore, the employer is ordered to send a check in the amount of \$526.52 to this Department payable to ██████████ for the unpaid wages to this Department within 30 days of the date of this order.



Timothy G. Fischer
Hearing Officer

Date of Decision: September 7, 2022

TGF/nd