

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Tire Warehouse

Case No. 102537

DECISION OF THE HEARING OFFICER

APPEARANCES:

[REDACTED]
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:

September 12, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on June 6, 2022, alleging that he was owed \$1,400.00 in unpaid wages. Specifically the claimant seeks unpaid wages for two biweekly pay periods in March 2022 and \$400.00 in liquidated damages. The wage claim notice issued June 7, 2022. The employer failed to respond. The hearing was originally scheduled for July 13, 2022, rescheduled for August 12, 2022, rescheduled again and held September 12, 2022. The employer failed to respond to the rescheduled hearing notices.

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 \$1,400.00 in owed wages. The claimant is a tire mechanic and assistant manager at the employer's Laconia, New Hampshire location. The claimant's wage claim, documentation and testimony were that he is paid \$15.00 per hour, his net biweekly pay check is \$1,200.00 and he was only paid a net of \$500.00

for two paychecks in March and April 2022. He is still employed by the employer. The claimant testified he had been employed by the employer for a number of years before transferring to the Laconia location.

The claimant testified that the discrepancy in his wages was due to a feature of the dayforce.com payroll system whereby the manager on duty had to clock each employee in and out of the time system daily. If the manager did not clock the employee in and out accurately, the employee's hours were not calculated correctly. The claimant testified that he has repeatedly asked management to correct the discrepancy and pay him his back wages. The claimant testified that he was told the corporate office would have to correct the discrepancy.

The claimant testified that the payroll problems began after Monroe Tire bought Tire Warehouse and implemented the dayforce.com time system. The claimant testified the problem with the payroll system appears to have been corrected as he has not had any underpayment since April 9, 2022. However, the claimant has not been compensated for the underpayment. The claimant testified that his manager knew about the hearing and was supportive of his claim but was unable to rectify his pay discrepancies.

The wage claim covers the period from March 9, 2022 to April 9, 2022. The dayforce.com employee for that period was submitted into evidence. That record indicated the claimant worked 213.5 hours and was paid for 96 hours. The claimant testified that he believed this was accurate. The discrepancy is 117.5 hours. The claimant alleged he is owed an estimated \$1,400.00 in wages for the period. The claimant testified his salary was \$15.00 per hour. \$15.00 multiplied by 117.5 equals \$1,762.50.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that he 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 he is owed \$1,400.00 in unpaid wages from March 2, 2022 to April 9, 2022.

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..."

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

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 presented evidence and credibly testified that he was not paid his full wages. Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee within 15 days of the expiration of the work week, it is found that the claimant proved by a preponderance of the evidence that he was not paid his full wages and is owed \$1,762.50.

Regarding liquidated damages under RSA 275:44 IV, it has been more than 10 days since the underpayment. Therefore, the claimant is entitled to liquidated damages in the amount of \$1,762.50 under RSA 275:44 IV.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due to an employee, this Department finds that the claimant proved by a preponderance of the evidence that he was not paid his full wages in the amount of \$1,762.50.

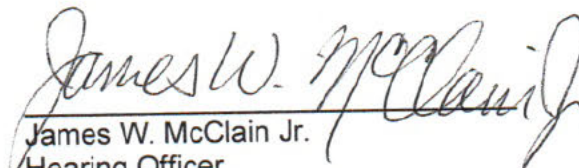
Based on the testimony and evidence presented, it is found that the employer willfully and without good cause failed to pay the claimant within 72 hours as required under RSA 275:44 IV and as such is required to pay liquidated damages in the amount of \$1,762.50.

It is hereby ruled that the Wage Claim is **valid in the amount of \$3,525.00.**

The employer is hereby ordered to send two checks to this Department, payable to ██████████ One in the total of \$1,762.50 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 \$1,762.50 for the liquidated damages, within 30 days of the date of this Order.

September 29, 2022
Date of Decision

JWM/nd


James W. McClain Jr.
Hearing Officer