

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

BMW Manchester

Case No. 102962

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant did not appear
Joseph Fritz, Michael Lourenco, employer

NATURE OF DISPUTE: RSA 275:43 I - Weekly, Unpaid Wages
RSA 275:43-b - Payment of Salaried Employees, Unpaid Salary

DATE OF HEARING: August 22, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on July 5, 2022, alleging that he was owed \$1,400.00 in unpaid wages. Specifically the claimant seeks two weeks salary. Notice of the claim was sent to the employer on July 8, 2022. The employer filed an objection on July 14, 2022 alleging that the claimant had been paid. The claimant requested a hearing July 14, 2022. The hearing notice issued July 22, 2022.

The claimant did not appear for the hearing. A review of the file indicated that the notice of hearing was mailed to the claimant at the address he provided in the original claim and was not returned to the Department as undeliverable. It was therefore determined that the claimant received adequate notice of the hearing. After waiting 15 minutes for a delayed arrival or other communication from the claimant, the hearing proceeded in his absence, consistent with administrative rule Lab 203.04.

The employer's representative was advised that it was the claimant's burden to prove the allegations in his claim. He was further advised that employer was not required to present rebuttal evidence unless and until the claimant presented testimony or evidence in support of his claim.

FINDINGS OF FACT

The following findings are based on matters of record in the Department file.

The claimant asked for \$1,400.00 in owed wages. The claimant's salary was \$700.00 per week. The employer's pay week runs from Wednesday to Tuesday. The claimant worked for the employer from Thursday June 16 to Thursday June 23, 2022. The claimant worked Thursday June 16, Friday June 17, Monday June 20 and Tuesday

June 21, 2022. Although the claimant worked only four days that week, he was paid his full salary. The employer provided documentation of that fact.

The claimant worked Wednesday June 22 and Thursday June 23, 2022. On June 24, 2022 the claimant informed the employer via text message that he would not be returning to work. The employer prorated the claimant's paycheck dated July 1, 2022 pursuant to RSA 275:43-b II. The employer provided documentation of that fact.

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).

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..."

The employer's un rebutted evidence and testimony that the employer paid full wages to the claimant is persuasive. In light of this testimony, the claimant failed to meet his burden of proving that he was not paid in accordance with RSA 275:43 I.

RSA 275:43-b, II provides in pertinent part,

"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 claimant was paid full salary for his first week of work even though he was hired after the beginning of the pay period and the employer was entitled to prorate the claimant's salary. The claimant terminated his employment during his second week of work. Therefore the employer prorated the claimant's salary as allowed under RSA 275:43-b.

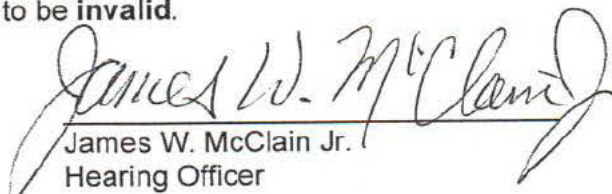
DECISION

The claimant failed to appear at the hearing and offered no evidence to support his allegations. The employer presented credible evidence that the employer paid the claimant all wages and salary due.

The wage claim is found to be **invalid**.

September 7, 2022
Date of Decision

JWM/nd


James W. McClain Jr.
Hearing Officer