

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Murphy's Taproom & Carriage House
Case No. 103013

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ Claimant
Keith Murphy, Michelle Brown, for 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 25, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on July 13, 2022, alleging that he was owed \$2,500.00 in unpaid wages. Specifically the claimant seeks two weeks salary. Notice of the claim was sent to the employer on July 15, 2022. The employer filed an objection on August 4, 2022 alleging that the claimant had been paid all wages owed. The claimant requested a hearing August 5, 2022. The hearing notice issued August 8, 2022.

FINDINGS OF FACT

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

The claimant's salary was \$65,000.00 per year or \$1,250.00 per week. His first day of employment was Monday June 27, 2022. The claimant's first day as a salaried employee was July 4, 2022. July 4, 2022 was the beginning of the pay period. On July 7, 2022 the claimant gave two weeks' notice. On July 8, 9 and 10, 2022 the claimant was observed to have left work early each day. On July 11, 2022 the employer terminated the claimant. The claimant asked for \$2,500.00 in owed wages. The parties agreed the employer had paid the claimant \$1,250.00 by check dated July 22, 2022. The check was submitted into evidence. The parties agreed the claimant was paid through July 10, 2022.

The employer's written response and testimony were that the claimant was terminated for cause and that he prorated the claimant's paycheck dated July 22, 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 through July 10, 2022, his last day of work. However, the claimant was terminated for cause during his two week notice for failure to work his assigned hours. Therefore the employer prorated the claimant's salary as allowed under RSA 275:43-b.

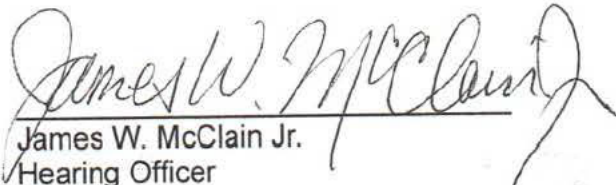
DECISION

The claimant was terminated for cause. 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 12, 2022
Date of Decision

JWM/nd


James W. McClain Jr.
Hearing Officer