

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Cleaning & More
Case No.: 58542

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses

Date of Hearing: April 10, 2019

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$2,996.25 in unpaid wages and unreimbursed mileage expenses.

At the hearing, the claimant amended her claim to \$1,137.01 for two pay checks that were returned due to insufficient funds and one pay check she was not able to cash upon presentation to the bank; and \$580.50 in unreimbursed mileage for 1,075 miles at a promised reimbursement rate of \$0.54 per mile. She stated she had not received any pay checks for the weeks ending January 6, 2019, January 13, 2019, and February 17, 2019, but did not know any amounts that might be due for these dates.

The employer did not provide a specific objection to the wages claimed.

The employer did acknowledge receipt of the Hearing Notice via email on April 4, 2019, as she requested the hearing to be rescheduled. This request was denied.

She did not attend the scheduled hearing. The hearing proceeded without the appearance of the employer after waiting the required timeframe under Lab 203.04 (f).

FINDINGS OF FACT

The claimant worked for the employer as a cleaner. Her employment relationship included a regular hourly rate, mileage reimbursement of \$0.54 per mile and gas reimbursement.

The claimant received two pay checks which were returned due to insufficient funds: \$487.80 for the pay date of September 7, 2018, and \$265.85 for the pay date of November 9, 2018. Copies of the returned checks were submitted with the Wage Claim by the claimant. She has received no reimbursement for these checks to date.

The claimant received one pay check which was not able to be cashed upon presentation to the bank: \$383.36 for the pay date of December 30, 2018. She has received no reimbursement for this check to date.

The claimant did not receive any pay checks for the weeks ending January 6, 2019, January 13, 2019, and February 17, 2019. The claimant was not able to articulate any approximate amounts that might be due for these dates, only that she would like to have the checks so she may cash them.

The claimant submitted slips with her Wage Claim which contain the mileage reimbursement she seeks. Those slips total 1,075 miles.

DISCUSSION AND CONCLUSIONS

The claimant bears the burden to prove she was not paid all wages and employee expenses claimed as due.

The claimant provided credible and persuasive testimony she worked the hours for which she seeks wages from the employer.

The claimant produced copies of pay checks from her bank that the \$487.80 for the pay date of September 7, 2018, and \$265.85 for the pay date of November 9, 2018, did not clear. She provided credible testimony that the \$383.36 for the pay date of December 30, 2018, could not be paid upon presentation to the bank, and that she had not received any reimbursement for these checks.

Because the claimant provided credible testimony and evidence she is due claimed wages from these three checks and has not received these wages, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed wages in the amount of \$1,137.01 ($\$487.80 + \$265.85 + \383.36).

The claimant alleges she is due three pay checks for the weeks ending January 6, 2019, January 13, 2019 and February 17, 2019. She is not able to articulate any amount that might be due for these wages after repeated requests. Though she provided credible testimony that she worked during these weeks and to be owed wages, no wages can be found due and owing without any approximate amount claimed to be due.

The claimant provided credible testimony and evidence, submitted text messages between herself and the employer, that she had an arrangement to receive mileage reimbursement in the amount of \$0.54 per mile. This documentation also shows a total of 1,075 miles driven for the employer.

As the claimant credibly testified she had an arrangement with the employer to receive \$0.54 per mile for mileage reimbursement and her documentation shows a total of 1,075 miles driven for the benefit of the employer, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed \$580.50 ($1,075 * \0.54) in unpaid mileage.

The Department's file contains notice that a compliance audit was previously conducted by this Department on an unrelated matter. As a result of that audit, the

Department ordered a wage adjustment to be paid. This claimant is a recipient of wages under that order, however, it is noted that the wages ordered through that adjustment and the wages ordered through this Decision are for separate, unrelated issues.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that she is owed a portion of the claimed wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,137.01 (\$487.80 + \$265.85 + \$383.36).

As RSA 275:43 V considers the payment of employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all employee expenses due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$580.50 (1,075 * \$0.54).

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,717.51 (\$1,137.01 + \$580.50), less any applicable taxes, within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: April 17, 2019

Original: Claimant
cc: Employer