

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

v.

A-Z RESTORATION SERVICES

Case No. 62236

DECISION OF THE HEARING OFFICER

**Appearances:** \_\_\_\_\_ on her own behalf, Pro Se  
Mr. Christopher Baldwin, on behalf of the employer

**Nature of Dispute:** RSA 275:43 I – Weekly, Unpaid Wages

**Witnesses:** \_\_\_\_\_ claimant, on her own behalf  
\_\_\_\_\_ on behalf of the claimant  
Mr. Christopher Baldwin, on behalf of the employer  
Ms. Samantha Anderson, on behalf of the employer

**Date of Hearing:** April 15, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

On the basis of the claimant's assertion that she is owed \$133.50 in unpaid wages, she filed a Wage Claim with the New Hampshire Department of Labor (DOL) on February 26, 2021; a Notice of Wage Claim was forwarded to the employer on March 3, 2021. The employer objected to the Wage Claim in writing on March 11, 2021. The claimant requested a formal hearing on March 22, 2021. Notices of Hearing were sent to all parties on March 30, 2021, and a formal hearing was scheduled accordingly.

A formal hearing was held at the Department of Labor Headquarters in Concord, New Hampshire on April 15, 2021 at 1:00pm. All parties appeared telephonically. Telephonic testimony was provided by \_\_\_\_\_ and \_\_\_\_\_ on behalf of the claimant, as well as Mr. Christopher Baldwin and Ms. Samantha Anderson, on behalf of the employer.

FINDINGS OF FACT

Ms. \_\_\_\_\_ testified that she started working for the employer as an as-needed custodian on January 8, 2021 and was paid at a rate of \$15.00 per hour. In this matter, Ms. \_\_\_\_\_ contends that she was guaranteed to be paid a four (4) hour minimum for cleaning of a specific school.

Ms. \_\_\_\_\_ testified that she specifically discussed pay for cleaning the school with Mr. Baldwin twice.

On January 8, 2021, Ms. \_\_\_\_\_ asserts that Mr. Baldwin met her in the parking lot of ServPro, handed her the keys to the company van, and imputed the address of the school into

her phone. During this conversation, Mr. Baldwin told her that she would be paid for four (4) hours of work, regardless of how many hours she actually worked.

On February 12, 2021, Ms. [redacted] claims that Mr. Baldwin again reiterated the guaranteed 4-hour minimum of pay to clean the school.

Ms. [redacted] asserts that she cleaned the school on January 8, 2021, January 15, 2021, January 29, 2021, February 5, 2021 and February 12, 2021. Ms. [redacted] believes she was not paid at all for the January 8, 2021 cleaning, and was shorted \$67.50 in the check covering the January 15, 2021 and January 29, 2021 cleanings. Further, Ms. [redacted] believes her check for the cleaning on February 5, 2021 was shorted \$7.50 and she was not paid at all for her cleaning on February 12, 2021. Ultimately, Ms. [redacted] asserts that she is owed unpaid wages in the amount of \$133.50.

Mr. [redacted] provided testimony on behalf of Ms. [redacted]; he is her boyfriend. Mr. [redacted] confirmed that on January 8, 2021, Mr. Baldwin met Ms. [redacted] in the ServPro parking lot, gave her the keys to the van, and inputted the address of the school into her phone.

Mr. Baldwin testified that prior to January 29, 2021, he was completely unaware that Ms. [redacted] was cleaning the school. Once he became aware, he paid Ms. [redacted] for the hours she worked and she is owed no further wages. Mr. Baldwin believes that Ms. [redacted] confused two different locations; there is a second location where he does guarantee a four (4) hour minimum, but not for cleaning the school.

Ms. Samantha Anderson provided testimony on behalf of the employer. Ms. Anderson is the Office Branch Manager and asserts that Ms. [redacted] was hired in late-January 2021.

Finally, Ms. [redacted] submitted text messages into evidence. There is an undated message from Mr. Baldwin to Ms. [redacted] stating "The VA is 4hrs per cleaning and gets paid next week. You get paid more for Fridays for doing the school." Ms. [redacted] responded, again undated, "If the school isn't a guaranteed 4 hours I'll pass on that one." (CL Supp)

Ms. [redacted] also submitted test messages which included a photo of a check dated February 5 [2021].

Ms. [redacted] requested a determination that she is owed and due \$133.50 in unpaid wages.

### **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 and due \$133.50 in unpaid wages. Proof by a preponderance of the evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

First, it should be noted that there is clearly some personal animus between Ms. [redacted] and Mr. Baldwin. Their testimony is directly contradictory to each other. Therefore, one must look to the evidence submitted into the record.

The text messages submitted by Ms. [redacted] are found to be persuasive and seem to support Mr. Baldwin's assertion that there was simply a miscommunication. The text message clearly stated, "The VA is 4hrs per cleaning and gets paid next week." This only demonstrates



that an individual is paid four (4) hours for cleaning the VA. There is no indication that the school also gets a guaranteed 4-hours of pay.

Further, Ms. \_\_\_\_\_ responded, "If the school isn't a guaranteed 4 hours I'll pass on that one." This seems to indicate that Ms. \_\_\_\_\_ understood that she would not be paid a guaranteed four (4) hours for cleaning the school.

Ultimately, it is determined that Ms. \_\_\_\_\_ was not promised a guaranteed four (4) hours of pay for cleaning the school and that she has been paid in full all wages for all hours worked.

Overall, it is the claimant's burden to prove, by a preponderance of the evidence, that she is owed and due \$133.50 in unpaid wages. Given the reasoning explained above, it is determined that Ms. \_\_\_\_\_ has not met her burden of proof in this matter. This Wage Claim is invalid.

### DECISION

Based on a thorough review of the evidence and testimony presented, and as RSA 275:43 (I) requires that an employer pay all wages owed and due to an employee, it is found that the claimant did not prove, by a preponderance of the evidence, that she is owed or due unpaid wages; it is hereby ruled that **this Wage Claim is invalid.**

April 21, 2021  
Date of Decision

Original: Claimant  
cc: Employer

JD/cb

  
\_\_\_\_\_  
Jeremy Micah Denlea, Hearing Officer