

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

v.

Acme Pressure Washing, L.L.C.  
CASE #62259

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, pro se, did not appear  
Lionel Greenwood, representing the employer

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid wages)  
RSA 275:21, VIII — Minimum wage (unpaid overtime  
pay) (withdrawn before hearing)

**DATE OF HEARING:** April 28, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed on March 4, 2021, alleging that he is owed wages for 40 hours plus 16 hours overtime, totaling \$680.00. Notice of claim was sent to employer on March 4, 2021. Employer's objection was received on March 15, 2021. In that objection the employer agreed that claimant worked 40 hours but denied he worked any overtime. The employer sent a copy of a payroll check and paystub for the weekly pay period ending June 6, 2020. The check was for 40 hours at 16.00 per hour, totaling \$640.00. In his objection, the employer indicated that the claimant never came by to pick up the check and was not entitled to it in any event, alleging that the claimant had received an advancement of \$500.00 and had also stolen from the company. In a letter received by the Department on March 19, claimant withdrew the claim for overtime and amended his other claim to \$640.00 for 40 hours' work.

The claimant requested a hearing and a notice of hearing was sent to both parties on March 30, 2021. The claimant's notice was not returned undelivered to the Department. The hearing was to be conducted as a telephonic hearing under a standing order of the Department, necessitated by the COVID-19.

At the appointed hour, a call was made to the New Hampshire State Prison, Concord, which the claimant gave as his current address. The call was transferred to the Northern Correctional Facility, where claimant is presently housed. There, contact was made with Sgt. Joey Pelletier, who indicated that he is responsible for facilitating court and

administrative hearings for prisoners. Sgt. Pelletier confirmed that mail sent to the State Prison in Concord with an inmate's name and inmate number would automatically be forwarded to him at NCF if he was housed there, which the claimant was. Sgt. Pelletier indicated that the claimant had not notified him of the upcoming hearing and therefore no arrangement had been made for him to be present in the hearing room. The employer was called and notified that the claimant did not answer and another call would be attempted at 2:30 p.m.

A second call was made to Sgt. Pelletier at 2:30 p.m. and claimant still was not present for the hearing. Based on claimant's prior communications with the Department and the fact that his hearing notice was not returned undelivered, it was determined that the claimant had received notice of the hearing. Contact was re-established with the employer and the hearing proceeded without the participation of the claimant, pursuant to Department Rule Lab 203.04.

### FINDINGS OF FACT

The following findings are based on the testimony of the employer's representative Lionel Greenwood, and exhibits the employer submitted with his objection. Mr. Greenwood acknowledged under oath that his written submissions to the Department were true, and those statements are treated herein as part of the testimony in the case.

Mr. Greenwood is \_\_\_\_\_ years old and lives in \_\_\_\_\_. He has owned the business for 28 years and has four employees. He acknowledged that the paystub he sent to the Department accurately sets forth the number of hours the claimant worked, his rate of pay, and the gross earnings he was due for that work. He testified that he had previously advanced the claimant \$500.00 and the claimant had agreed that on next payday he would accompany Mr. Greenwood to the bank, cash it, and give him back the \$500.00. However, the claimant did not come in as agreed to pick up the check and he was subsequently arrested. Mr. Greenwood testified that, in addition to the \$500.00 advance, claimant owed him for some equipment he had not returned to the employer.

### 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's written submission to the Department did not constitute substantive evidence. However, the employer's written objection with attached exhibits and his testimony at the hearing corroborated the claim that the claimant earned gross wages totaling \$640.00 and had not received his final paycheck.



The employer's argument that he should be allowed to recoup the \$500.00 advancement from these wages is understandable. However, the Department lacks authority to make such an order without evidence of an agreement in writing from the claimant at the time the advance was made, authorizing the employer to deduct the amount of the advance from the claimant's final wages:

**275:48 Withholding of Wages. –**

I. No employer may withhold or divert any portion of an employee's wages unless:

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(b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) ....

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(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

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(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

The employer admitted that he had no such written agreement by the claimant. The text messages tended to corroborate Mr. Greenwood's testimony that an advance had been made, but they failed to demonstrate an express, advance authorization by the claimant for the employer to make deductions from the final paycheck.

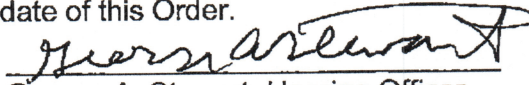
Based on the evidence submitted, the employer's argument that the claimant owes him more than the amount now sought by the claimant is unavailing in this administrative forum. That is not to say that the employer does not have another remedy in a court of competent jurisdiction.

**DECISION**

As RSA 275:48, I allows an employer to make deductions from wages due an employee with proper advance authorization, and as this Department finds that the employer failed to obtain such to recoup the \$500.00 advancement from the final wages, it is hereby ruled that the wage claim is valid in the amount of the full week's wages, which were shown to be \$640.00.

The employer is hereby ordered to send a check to the Department, payable to \_\_\_\_\_ in the amount of \$640.00 less applicable payroll deductions, within 30 days of the date of this Order.

May 10, 2021  
Date of Decision  
GAS/cb

  
George A. Stewart, Hearing Officer