

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

Trinity Logistics, L.L.C.
CASE #62271

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented
Craig Jennings, representing the employer (failed to appear)

NATURE OF DISPUTE: RSA 275:43, I & V— Weekly (unpaid wages/bonus)

DATE OF HEARING: April 21, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage complaint on March 8, 2021, alleging that she is owed a holiday bonus of \$300.00. Notice of claim was sent to employer, a delivery contractor for Amazon, on March 9, 2021. An objection was received from the employer on March 29, 2021. The claimant requested a hearing and a notice of hearing was sent on March 31, 2021. Both parties were to participate remotely by telephone under a standing order of the Department, necessitated by COVID-19.

At the appointed hour for the hearing, a call was successfully placed to the claimant. A call was then made to the employer's phone number, (provided on the wage claim. The call went to voice mail. Fifteen minutes later, a second call was made with the same result.

The employer had filed a written objection to the original claim, without providing a different telephone number or mailing address from those given on the wage claim. The hearing notice mailed to the employer was not returned undelivered. It was determined that the employer had received notice of the hearing. Pursuant to Administrative Rule Lab 203.04, the hearing proceeded in the employer's absence.

FINDINGS OF FACT

The following findings are based on the testimony of the claimant, claimant's exhibits, and matters of record in the Department file. During the

course of the hearing, the claimant acknowledged under oath that her written submissions to the Department were true, and those statements are treated herein as part of the testimony in the case.

Claimant, 32, has an associate degree from Hesser College awarded in 2012. She is working on her bachelor's degree in computer science. Before working for the employer, she was a delivery driver for another Amazon contractor for eight months. Prior to that she worked in a call center and in retail.

She was hired by the employer on February 11, 2020. Her first day at work was February 27, 2020. Her regular work schedule was Monday-Tuesday and Friday-Saturday. She worked four 10-hour shifts.

Her workday started at 8:45 a.m. when she arrived at the depot in Hooksett along with all the other drivers working that day. She would meet with the dispatcher, pick up a mobile phone, get assigned a delivery van, and receive her instructions for the day. She then picked up the packages she was to deliver and then followed the cellphone instructions for where to go. She would finish her work day between 5:00 and 7:00 p.m. She testified that even if she finished early, she was paid for a ten-hour day.

Claimant testified that she missed some work in August and was put on probation. Being on probation meant she would be terminated if she missed any more days. She got off probation on October 11. She also missed two days' work in early November because she was exposed to COVID-19 and had to be tested before returning to work.

At the end of November (she did not remember the exact date) when she arrived at work the dispatcher was telling her and all the other drivers that the company was going to pay a Christmas bonus for employees who worked through the busy delivery season, which ran post-Thanksgiving through the end of December. For full-time employees, the bonus would be \$300.00.

She worked all her assigned days after that up through December 22, 2021. On that day, she sprained her ankle while making a delivery. She called the dispatcher to report the injury and to request that a substitute finish her deliveries, because she needed to get medical attention. The dispatcher sent another driver to finish her deliveries and told her to send a text message to her supervisor, Craig Jennings. She did so, and he responded via text message that the company would take care of her medical bills. The relief driver arrived about an hour and a half later and transferred claimant's packages to his truck. Claimant then returned company truck to the employer's depot, got into her own car, and drove to an urgent care center. She was diagnosed with a sprain and taken out of work until December 29, 2021. She relayed this information, including some medical notes regarding being out of work, to Craig Jennings. She did not hear back that day from Mr. Jennings.

Claimant testified that, because of the injury, she was unable to do her scheduled shifts on Wednesday December 23; she was not scheduled to work any other days until Tuesday December 29. On December 29, as she was driving to work, she received a message from the dispatcher telling her not to come in; there was no work for her.

On January 1, 2021, claimant received a text message from Mr. Jennings to the effect that routes had been cut for the next couple of weeks due to the lag after Christmas. She said that about 70 other drivers received the same message. Claimant never heard back from Mr. Jennings, despite repeated text messages asking when she would be called back. She gave her notice on February 8, 2021.

Claimant requested a payout of her personal time off. On February 12, 2021, she received a payout for 2.12 PTO hours, totaling \$38.90.

She filed the instant claim for the \$300.00 bonus, which she believed she was entitled to because she worked through the busy period after Thanksgiving up until she went out of work due to a workplace injury.

In its written objection, the employer stated as follows:

In response to the complaint, Merissa does not qualify for the bonus. She did not work for the company in the month of January. Merissa was on probation [sic]. She also did not show up to work during the month of December on multiple occasions (which is documented). She had just come off of probation. Despite those issues, we offered her an opportunity to come back after she contacted us about the bonus (since employees do not receive the bonus if they no longer work for the company), she declined the work and she did not rejoin the company.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that she 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).

A bonus, when due, is part of wages, RSA 275:42, III. It is the claimant's burden to prove that a bonus was offered, the terms and conditions of that bonus, that she satisfied those conditions, and the amount of the bonus that was due and not paid.

According to the claimant's testimony, at the end of November 2020, a \$300.00 bonus was offered to full-time employees who worked through the busy season from Thanksgiving up through New Year's Day. The bonus was to be

paid in January. The claimant admitted she did not work past December 22, 2020, the day she sprained her ankle during her regular shift, and was unable to return to work until December 29, 2020. On that day, she was told not to come in. The claimant testified that she only missed one scheduled day during that period, Wednesday, December 23, 2020. This testimony was somewhat in conflict with her testimony that her regular workdays were Monday-Tuesday and Friday-Saturday. It is possible that her schedule was changed during the Christmas season; it is also possible that she was not looking at a calendar when she testified, and was mistaken. In any event, taking her testimony at face value, it is apparent that she did not work all of her scheduled days in December.

She argued that because the missed work days were due to a work injury sustained through no fault of her own, that did not disqualify her from eligibility to receive the bonus.

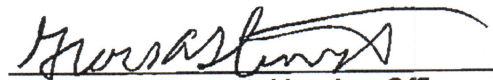
The employer painted a different picture in its written objection, alleging that there were multiple occasions in December when she missed work and that she was no longer an employee in January when the bonuses were paid. However, in absence of sworn testimony, no weight is given to the employer's written statement.

Nevertheless, based on the evidence submitted, it is found that the claimant failed to meet her burden of proving that she satisfied a condition for eligibility to receive the bonus—that she work through the busy Thanksgiving-to-New-Years' delivery season. It is true that her failure to do so was not her own fault; but at the same time, it was not the employer's fault, either.

DECISION

The claimant failed to prove that she satisfied the condition qualifying her to receive the bonus by not missing any scheduled work days from after Thanksgiving to the end of the year. As RSA 275:43, 1 requires that an employer pay all wages, including bonuses, due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she was not paid all wages/bonuses due, it is hereby ruled that the Wage Claim is **invalid**.

May 18, 2021
Date of Decision


George A. Stewart, Hearing Officer

GAS/cb