

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.
KFC

Case No. 62273

DECISION OF THE HEARING OFFICER

Appearances: _____ claimant, on his own behalf, Pro Se

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

Employer: KFC – Failed to Appear

Date of Hearing: May 17, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

On the basis of the claimant's assertion that he is owed \$270.00 in unpaid wages, he filed a Wage Claim with the New Hampshire Department of Labor (DOL) on March 9, 2021; a Notice of Wage Claim was forwarded to the employer on March 9, 2021. The employer did not object to the Wage Claim in writing. Notices of Hearing were sent to all parties on April 16, 2021, and a formal hearing was scheduled accordingly.

Notices of Hearing were sent to both parties via first class mail and the employer's Notice of Hearing was not returned to the Department of Labor as undeliverable. Additionally, the employer was sent a Notice of Telephonic Hearing requesting that the employer reply with a phone number they wished to be reached at for hearing. The employer did respond with a phone number. However, the department was able to have further communications with the employer and was informed to call them at a number ending in 5711. The number was called at 1:00pm and the General Manager explained that no one was prepared for a hearing; no further phone number was given. Therefore, it is deemed that the employer, KFC, received proper notice prior to the scheduled hearing. Despite having proper notice, the employer was not prepared to participate in a hearing. After waiting fifteen (15) minutes, pursuant to Administrative Rule Lab 203.04, the hearing proceeded in the employer's absence.

A formal hearing was held at the Department of Labor Headquarters in Concord, New Hampshire on May 17, 2021 at 1:00pm. Telephonic testimony was provided by the claimant,

FINDINGS OF FACT

Mr. _____ began working for KFC in Winter 2021, as a Cook; Mr. _____ believed that he started his employment on February 15, 2021. Mr. _____ was to be paid at a rate of \$10.00 per hour.

Mr. [redacted] worked for four (4) days; he believed that he worked thirty (30) hours but estimated conservatively that he worked twenty seven (27) hours. After these four (4) days of work, Mr. [redacted] had car problems and was unable to get to work. He attempted to call the employer but did not receive a response. Additionally, he tried to pick up his check from the employer in person but was told there was no check for him.

Mr. [redacted] never received any wages for the time he worked for the employer. Mr. [redacted] believed that part of the problem stems from the fact that the employer had him start working before he was on-boarded, which caused confusion.

Mr. [redacted] requested a determination that he is owed and due unpaid wages in the amount of \$270.00.

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 \$270.00 in unpaid wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The employer, KFC, failed to appear at the formal hearing and did not provide any evidence or testimony

Applicable law regarding the alleged unpaid wages is New Hampshire RSA 275:43 (I), Unpaid Wages:

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, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph IV or IV-a(a), on regular paydays designated in advance by the employer and at no cost to the employee.

In this matter, the employer never issued payment of wages for the hours that Mr. [redacted] worked. This is clearly in violation of RSA 275:43(I).

During the formal hearing, Mr. [redacted] testimony was both credible and forthright. Again, the employer failed to appear at the formal hearing and did not provide any evidence or testimony. Therefore, it is found persuasive that Mr. [redacted] is owed \$270.00 in unpaid wages.

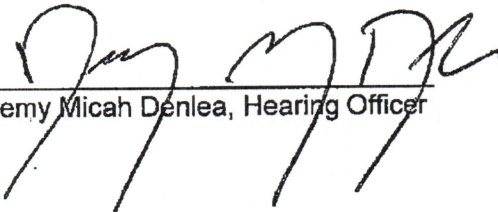
Overall, it is the claimant's burden to prove, by a preponderance of the evidence, that he is owed and due unpaid wages. Given the reasoning explained above, the claimant has met his burden of proof in this matter, by a preponderance of the evidence, for the amount of \$270.00 in unpaid wages. This claim is valid.

DECISION

Based on a thorough review of the evidence and testimony presented, and as RSA 275:43 (l) requires that an employer pay all wages due to an employee, it is found that the claimant proved, by a preponderance of the evidence, that he is owed and due unpaid wages and it is hereby ruled that **this Wage Claim is valid in the amount of \$270.00.**

The employer is hereby ordered to send a check to the Department of Labor, payable to in the total of **\$270.00**, less applicable taxes, with a statement of such deductions, **within thirty (30) days of the date of this Order.**

May 26, 2021
Date of Decision


Jeremy Micah Denlea, Hearing Officer

Original: Claimant
cc: Employer

JD/cb