

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

US Facilities Maintenance
CASE #62630

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented
Perry Chaney, Jr., representing the employer

NATURE OF DISPUTE: RSA 275:43, I — Weekly (unpaid wages)

DATE OF HEARING: June 29, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed on May 5, 2021, alleging that she was not paid her final wages for working the first half of September 2020 in her part-time cleaning job at the Portsmouth post office. Notice of claim was sent to the employer on May 6, 2021. No objection was received and the claimant requested a hearing. The hearing notice was sent on June 3, 2021. Both parties participated remotely by telephone under a standing order of the Department, necessitated by COVID-19.

FINDINGS OF FACT

The following findings are based on the testimony of the claimant, employer's representative, and matters of record in the Department file.¹ 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 is 28 years old and lives in Ashland. She has one and a half years of college, plus training as a para-educator. Before working for the employer, she worked for nine years in a cleaning job at a recreational center in Campton

¹ After close of business on the day before the hearing, claimant submitted exhibits by fax, without copying the employer; the exhibits were disallowed as untimely and not copied to the employer. See Department Rule LAB 204.07(b).

The claimant started working for the employer in August 2019. Her job was to clean the Portsmouth post office. She generally worked two hours a day, five days a week, and was paid a flat rate of \$600.00 per month on the 25th of the month following the month in which she worked. She testified that there was some flexibility in her hours; she doubled up on some days if she missed time on other days. She was never sanctioned and never had her pay docked.

Around August or early September 2020, claimant got a full-time job as a para-educator. She notified her employer that her last day on the job would be September 17, 2020. She testified that the employer agreed to pay her \$300.00 for working through that date, and she did so. She also located a person to take over her job after she left.

Claimant testified that the employer had a mobile-phone app called IVR for keeping track of employee time at work. She said that she often had difficulties using the system and frequently did not log her hours. However, she never had her pay docked on account of that. In September 2020, she did not use the mobile clock-in system at all. She did not receive any warnings from the employer about not clocking in.

On October 25, 2020, claimant did not receive the expected \$300.00 payment and contacted Mr. Perry to find out why. Mr. Perry told her that she had not worked her scheduled shifts in September and thus would not be paid.

Perry Chaney, Jr., 51, is the owner of the employer, a cleaning and maintenance company headquartered in Detroit, Michigan. He has worked in building maintenance for over 20 years. Mr. Chaney started the company three years ago. It provides services in post offices and other facilities around the country, including the post office in Portsmouth. On the post-office jobs, the company is a subcontractor for another company, Allied National Services, that contracts directly with the postal service.

Mr. Perry testified that the claimant had been an excellent employee. She did not always work strictly according to her schedule, but she always managed to get the cleaning job done; he did not receive any complaints from his liaison at the post office. He was aware that the claimant had problems using the IVR system; in such cases, she was supposed to use text messages to document her time on and off the job. He had never had to dock her regular pay of \$600.00 a month for not doing her job.

Mr. Perry testified that the company he subcontracts for, Allied National, does monthly audits of employee time records. If an audit turns up questions as to actual hours worked by an employee, the issue is resolved by talking to the employee. In the claimant's case, the monthly audit for September (completed in October) indicated that the claimant had not punched in at all using the IVR app. The claimant was no longer working for the employer and there was no

resolution of the questions raised by the audit. Mr. Chaney testified that he also did not receive text messages from the claimant to cover the disputed work days. The audit was the basis for not paying the claimant for the first half of September.

Mr. Perry confirmed that, before she quit, the claimant found another employee to take over her job. He also said that his company was fined by Allied National for some problems with respect to its cleaning contract for the Portsmouth post office. However, the problems occurred in late September and had nothing to do with the claimant.

Mr. Perry stated that he did not know whether the claimant had actually done the work she was paid to do in September; he was simply relying upon the audit results. He acknowledged that he did not receive any complaints from the post-office liaison to the effect that the claimant had not done her job in the first half of September.

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).

It was not contested that the employer had agreed to pay the claimant half her regular monthly wage for working approximately half a month in September 2020. The issue was whether the claimant actually did the work and earned that wage. The claimant testified credibly that she did the cleaning job in September 2020 just as she had done every month since August 2019. She claimed to have documentary proof of this, including a statement signed by the postmaster of the Portsmouth post office. However, that evidence was disallowed due to its untimely disclosure.

The employer described the claimant as an excellent employee who had performed her work in a responsible manner since August 2019. She had not always strictly followed her assigned schedule, but she always got her work done. She was never sanctioned for missing work and he never docked her pay.

With regard to the first half of September, the employer received no complaints that the claimant was not doing her job. It was only when the October audit was done that a potential issue was identified.

The audit report, relied upon by the employer, did not conclusively establish that the claimant did no work; claimant admitted she did not use the

IVR program. The claimant's testimony that she performed her usual work in the first half of September 2020 is credited. Had the claimant not done her regular cleaning job in September, it seems likely that the employer would have heard about it from the post office liaison before October 2020. Claimant's credibility was also enhanced by the employer's testimony that she was generally an excellent, responsible, and professional employee, and that she took the trouble to locate a replacement person to take over her job when she left.

DECISION

As RSA 275:43, I requires that an employer pay all wages due an employee, and as the Department finds that the claimant proved by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that her Wage Claim is valid in the amount of \$300.00.

The employer shall, within 30 days of the date of this Decision, mail to the Department a check in the amount of \$300.00, payable to ██████████, in full settlement of the above-referenced claim.

July 26, 2021
Date of Decision


George A. Stewart, Hearing Officer

GAS/cb