

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

MECHANICAL CONCEPTS, INC.
Case No. 62756

DECISION OF THE HEARING OFFICER

Appearances: █ claimant, on his own behalf, Pro Se
Dee Luszcz, on behalf of Mechanical Concepts, Inc.

Nature of Dispute: RSA 275:43 I – Weekly, Unpaid Wages
RSA 275:48 – Deductions, Unauthorized

Date of Hearing: July 22, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

On the basis of the claimant's assertion that he is owed \$625.00 in unpaid wages and illegal deductions, he filed a Wage Claim with the New Hampshire Department of Labor (DOL) on May 24, 2021; a Notice of Wage Claim was forwarded to the employer on May 26, 2021. The employer objected to the Wage Claim in writing. The claimant requested a hearing and Notices of Hearing were sent to both parties on June 29, 2021; a formal hearing was scheduled accordingly.

A formal hearing was held at the Department of Labor Headquarters in Concord, New Hampshire on July 22, 2021 at 9:45am. All parties appeared telephonically. Telephonic testimony was provided by the claimant, on his own behalf, and by Ms. Luszcz on behalf of Mechanical Concepts, Inc.

FINDINGS OF FACT

The claimant began working for Mechanical Concepts, Inc. in October 2019. He was hired as a plumber's apprentice at an hourly rate of \$15.00 per hour. He testified this is a full-time, 40 hour per week position.

The claimant shared as an apprentice he was attending school and that he had a contract with the employer regarding the employer paying for the first year of school as an advance. He then agreed to payroll deductions to pay back the \$1,400.00 advance for the first year of schooling. The claimant testified that he completed his first year of school successfully and repaid the advance through payroll deductions.

The claimant understood that the employer then covers the next three years of schooling. The employer did pay for the second year of schooling and no payroll deductions were made from the claimant's pay. The claimant separated from employment with this employer on May 14, 2021. At the time of separation, he was earning \$17.00 per hour. The claimant did not receive his final paycheck because the employer advised they withheld it to

repay the advance for the second year of schooling. The claimant testified that his net pay is \$525.00 and is asking for an award in that amount for his final week of pay.

In addition, the claimant asserts that he was required to have an OSHA certification to do the job. He agreed that the employer paid for the course, but indicated he was not paid for his time taking the course. He is seeking payment of the amount of \$10.00 per hour for the 10 hours it took to complete the course.

Duly sworn, Ms. Luszcz testified that the claimant began working for the company on November 4, 2019 and last worked on May 14, 2021. His rate of pay at the time of separation from employment was \$17.00 per hour.

With respect to the apprenticeship program, the employer loans apprentices \$1,400.00 up front by prepaying the tuition and recoups the money through payroll deductions from the employee. The claimant did have payroll deductions until the initial \$1400 was paid back. The employer does not require apprentices in their second year to pay back the tuition, but their policy is that apprentices who fail the program or do not advance to the following year will owe the employer for tuition paid. The employer's goal is that employees will pass the course and stay with the company.

With respect to the OSHA training, the witness testified that the employee is required to have a certification in order to complete the program and prior to performing work. She indicated the employer is not required to pay for someone to have the license. The employer did pay for the course on behalf of the claimant, but it is never been their practice to pay someone for the hours they spent obtaining their certification. She likened this to a pizza delivery driver being required to have a driver's license to deliver pizzas.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he is owed \$625.00 in unpaid wages and illegal deductions. 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 claimant argues that the contract he signed regarding the apprentice program policy applies to the first year of schooling. He completed the first year of schooling and repaid the \$1,400.00 advance through payroll deductions. The claimant argued that the contract does not apply to the second and subsequent years of the program and argued it was unlawful for the employer to have withheld his final paycheck. He also feels he is entitled to payment for the hours taking the certification course to receive his OSHA license.

Ms. Luszcz argued the contract and policy does cover subsequent years of education as the contract notes that any unpaid advance will be deducted from an employee's final check if they leave the company during the program. She argued that not only does the employer not owe the claimant his final paycheck but the claimant owes them money for the remaining balance of the \$1,400.00 tuition. She further argued that the employer was generous enough to pay for the OSHA course, but they are not required to pay him for the hours he spent taking the course to obtain a certificate he was required to have.

There is no dispute that the claimant worked for this employer for the week ending May 14, 2021. There is also no dispute that the claimant was earning \$17.00 per hour at that time.

The claimant's argument with respect to the apprenticeship policy program not applying to his second year of schooling is persuasive. The contract itself refers to the company advancing \$1,400 .00 for the initial enrollment fee to pay for the first year of the four-year course. The contract goes on to articulate how the payroll deductions will be made for the claimant to repay that \$1,400.00 advance. The claimant's testimony that he repaid the \$1,400.00 advance through payroll deductions is found to be credible. The employer's argument that a subsequent payment for the second year of education was an "advance" it is not persuasive.

The employer relied on communications with the Department of Labor regarding the appropriateness of withholding the final weeks' pay to cover the advance. The communications that the employer had with the department relative to this matter did not articulate that the signed contract covers the initial advance for the first year only. Once the claimant repaid the initial advance, the contract was satisfied. The employer's withholding of wages to satisfy payment of tuition they made for the second year is not found to be lawful deduction of wages.

With respect to the issue of the OSHA training, the claimant is statutorily required to hold an OSHA certification to perform the work for which he was hired. The statute does not mandate that the employer pay for that certification. The employer testified persuasively that it is not the practice to have employees obtain their certification during work time as it is a personal certification that the employee is required to have.

Overall, it is the claimant's burden to prove, by a preponderance of the evidence, that he is owed \$625.00 in unpaid wages and illegal deductions. Given the reasoning explained above, the claimant has successfully met his burden of proof in this matter that he is owed wages for the final week he worked. The claimant's hourly rate was \$17.00 per hour any work 40 hours per week, his testimony that he is owed \$525.00 net pay for the final week of work is persuasive.

DECISION

After a thorough consideration of the evidence and testimony presented, and as RSA 275:43 I requires that an employer pay an employee all wages that are owed and due, it is found that the claimant has successfully met his burden to prove by a preponderance of the evidence that he is owed for unpaid wages and illegal deductions; it is hereby ruled that **this Wage Claim is valid in the net amount of \$525.00.**

The employer is hereby ordered to send a check to the Department of Labor, payable to ██████████ in the net total of **\$525.00**, which is his gross pay of \$680 less applicable taxes with a statement of said deductions, **within thirty (30) days of the date of this Order.**

August 4, 2021
Date of Decision



Tahra White, Hearing Officer

Original: Claimant
cc: Employer

TW/cb