

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

MONADNOCK BOAT STORE

Case No. 63056

DECISION OF THE HEARING OFFICER

Appearances: █ on his own behalf, Pro Se
Arif Shaikh, on behalf of the employer

Nature of Dispute: RSA 275:43 I - Weekly, Unpaid Wages
RSA 275:43-b - Payment of Salaried Employees, Unpaid Salary

Date of Hearing: August 26, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

On the basis of the claimant's assertions that he is owed \$320 in unpaid wages in the form of unpaid salary, he filed a Wage Claim with the New Hampshire Department of Labor on July 6, 2021; a Notice of Wage Claim was forwarded to the employer on July 7, 2021. The employer objected to the Wage Claim in writing on July 19, 2021. The claimant requested a hearing on July 22, 2021. Notices of Hearing were forwarded to both parties on July 28, 2021, and a hearing was scheduled accordingly.

A formal hearing was held at the New Hampshire Department of Labor (DOL) Headquarters in Concord, New Hampshire on August 26, 2021 at 11:00 AM. The claimant appeared in person; Arif Shaikh appeared telephonically.

At the commencement of the hearing, the claimant moved to amend the wage claim to request \$336 in unpaid wages. There was no objection from the employer.

FINDINGS OF FACT

The claimant began working for the employer in February 2007 as the General Manager. The claimant reports that he last worked for the employer on June 25, 2021. At that time, he was the manager and was salaried at \$3360 which was paid bi-weekly.

The claimant testified that he gave notice two weeks prior to June 25, 2021 that he would be vacating his position and ending his employment with Monadnock Boat Store.

The claimant testified that the employer's pay period was Sunday through Saturday and he was paid biweekly at a salary of \$3360. He received a final paycheck for \$3024 and asserts he is owed payment of \$336 for Friday, June 25, 2021.

On behalf of the employer, Mr. Shaikh asserted that he is the president. Duly sworn, he testified that he made an appointment to meet with the claimant at 1 PM on June 24, 2021 at the Rindge, NH store. Mr. Shaikh generally works in Maine. Upon arrival at the store for the 1 PM meeting, he learned that the claimant had already left. He attempted to reach the claimant via telephone multiple times without success. He further testified that the claimant was scheduled to work Friday, June 25, 2021. He was advised that the claimant arrived at the office solely to retrieve his personal tools and left. Mr. Shaikh testified that although the claimant worked only half a day Thursday, June 24, they did pay him for the full day. The employer did not pay the claimant for work on Friday, June 25, 2021 because he did not perform any work.

APPLICABLE LAW

RSA 275:43 I states that every employer shall pay all wages due to employees. Applicable law, RSA 275:43-b states in part:

I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

(a) Any pay period in which such employee performs no work.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

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 \$336.00 in unpaid wages in the form of unpaid salary. Proof by a preponderance of the 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 argued that he was a salaried employee in New Hampshire and that in prior work periods he worked well many hours of overtime without additional compensation. The claimant is requesting payment of \$336.00 for Friday, June 25, 2021 which was the final day of the pay period.

Mr. Shaikh, on behalf of the employer, asserts that Mr. Smith was paid for all time worked and has been paid all wages owed and due. They paid the claimant for the full day worked on Thursday as he was a salaried employee, but did not pay him for Friday, June 25, 2021 as he did not work that day.

Ultimately, it is the claimant's burden to prove by a preponderance of the evidence that he is owed unpaid wages in the form of unpaid salary. The claimant testified that he left his employment on his own accord having given notice of his intent to terminate his employment two weeks prior to June 25, 2021. While the employee is requesting payment for the entirety of the pay period, the employer articulated that the claimant did not perform work on June 25, 2021 and as a result was not paid for that day. The claimant did not dispute this assertion made by the employer.

RSA 275:43 II allows employers to prorate salary to a daily basis when the employee terminates of his own accord prior to the final day of the pay period. The facts in this case support that the claimant last worked on Thursday, June 24, 2021. He was paid through the last day worked of June 24, 2021. He terminated his employment on his own accord and was paid for all time worked. Has the claimant did not work on June 25, 2021 and terminated his employment of his own accord prior to the end of the pay period, the employer did not act improperly when prorating the salary to a daily basis.

DECISION

Based on a thorough review of the evidence and testimony presented, and as RSA 275:43 I requires that an employer pay all wages due to an employee, it is determined that the claimant did not prove, by a preponderance of the evidence, that he is owed and due unpaid wages in the form of unpaid salary and it is hereby ruled that **this Wage Claim is invalid.**

Date of Decision: September 7, 2021



Tahra White, Hearing Officer

Original: Claimant
cc: Employer
TW/js