

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**v.**

**Sun Ray Diner, LLC**  
**Case No.: 63222**

**DECISION OF THE HEARING OFFICER**

**Appearances:** [REDACTED] the claimant, appeared pro se  
Sun Ray Diner, LLC failed to appear

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

**Date of Hearing:** September 22, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The current issue concerns the employer's alleged failure to pay the claimant all the wages due. Specifically, the claimant asserts that he is owed \$1,400.00 in unpaid salary.

The claimant filed a Wage Claim with the Department on July 29, 2021. The employer filed an objection to the wage claim on August 19, 2021 and the claimant requested a hearing. Hearing Notices were forwarded to the parties on August 24, 2021, and a Hearing was held at the Department on September 22, 2021.

The hearing was scheduled for 11:00AM. The employer failed to appear at the Department of Labor. Pursuant to Lab 203.04 (b), the Department waited 15 minutes after the scheduled hearing time. The hearing was called at 11:15am and proceeded with the sworn testimony of the claimant.

**FINDINGS OF FACT**

The claimant began work for the employer in March 2021. The claimant was hired as the executive chef. The claimant's salary was \$1400.00 per week. The claimant was paid weekly. The workweek started on Sunday and ended on Saturday. The claimant worked the entire week of July 11th. On July 18<sup>th</sup> the claimant worked his

normal hours in his normal position. The claimant had July 19<sup>th</sup> off work. The claimant presented to work on July 20<sup>th</sup> and was informed that the restaurant would be closed that day. There was a discussion with the owner on the 20<sup>th</sup> that the claimant's position as the executive chef would be terminated and he would be transitioned to an hourly line cook position. The claimant told the owner, Rick, that he would need to discuss this with his wife. The claimant did not return to work after the 20<sup>th</sup>.

The claimant submitted his July 23, 2021 paycheck into evidence. The pay period began on July 4, 2021 and ended on July 10, 2021. The paycheck reflects salary of \$1,400.00. The claimant submitted his July 30, 2021 paycheck. The pay period is July 11, 2021 to July 19, 2021. The claimant is paid his weekly salary of \$1,400.00 for this time period.

On Thursday August 19, 2021, the Department of Labor received an email objection to the claimant's wage claim. The email objection indicates that the claimant was demoted to the line cook position on July 19, 2021. The claimant was not willing accept the demotion and never came back to work. The employer stated that they paid the claimant his salary July 23 and July 30 and he is not owed any additional wages.

### **DISCUSSION AND CONCLUSIONS**

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional 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.

RSA 275:43 I requires that an employer pay all wages due an employee, on time, on paydays designated in advance.

RSA 275:42, VI defines salaried employees. Specifically, the term "salaried employee" means any employee who under an employment agreement or as a matter of policy or practice, regularly receives each pay period a predetermined or fixed amount of money constituting compensation, based on a predetermined amount of wages to be paid as determined by a daily rate, weekly rate, bi-weekly rate, semi-monthly rate or monthly rate, and which amount is not subject to reduction because of variations in the quality or quantity of the work performed and regardless of the hours or days worked except as otherwise provided in RSA 275:43-b.

In this case, there is no question that the claimant is a salaried employee. The claimant and the employer agreed to a weekly salary of \$1,400.00. The claimant was paid weekly. It should be noted that RSA 275:43, I requires that employees receive their paychecks within 8 days after the expiration of the workweek. The employers history of paying his employees 13 days after the expiration of the work week is in violation of RSA 275:43, I.

A salaried employee is entitled for his/her entire salary for a pay period unless he/he terminates his/her own employment or is terminated for cause by the employer. See RSA 275:43- b (II).

In this case, the claimant did not quit his salaried position. It is clear that the claimant was terminated from his salaried position midway through the pay period. It is possible that the employer simultaneously offered the claimant additional work as a line cook that he did not accept; however, the employers version of the situation as outlined in the objection, that the claimant quit, is not found to be persuasive.

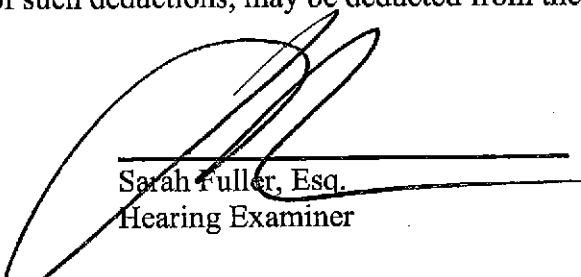
It is found that the claimant was terminated from his position as an executive chef on July 20, 2021. This was mid pay period for a salaried employee. The claimant was entitled to receive his entire salary for this week.

For argument sake, even if the claimant had quit and would therefore only be entitled to a prorated wage for July 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup>, the employer still failed to comply with the law. Upon review of the claimant's final paychecks, it is clear that the claimant did not receive any compensation for work during the week of July 18<sup>th</sup>. The employee would have been entitled a pro-rata salary for the three workdays.

### DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant proved by a preponderance of the evidence that he was not paid his salary for the weekly pay period of July 18, 2021 to July 24, 2021 he is owed additional wages. It is hereby ruled that the claimant is owed \$1,400.00 in unpaid wages.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the amount of \$1,400.00 within 30 days of the date of this Order. Applicable taxes, with a statement of such deductions, may be deducted from the owed wages.



Sarah Fuller, Esq.  
Hearing Examiner

Date of Decision: September 23, 2021

Original: Claimant  
cc: Employer

SF/sf