

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE



v.

Castle Builders, L.L.C.  
CASE #63268

**DECISION OF THE HEARING OFFICER**

**APPEARANCES:** Claimant, self-represented  
Christopher Zografos, representing the employer

**NATURE OF DISPUTE:** RSA 275:43, I, V — Weekly (unpaid wages/holiday pay)  
RSA 275:43-b — Payment of Salaried Employees (unpaid salary)  
RSA 275:44, IV — Employees Separated from Payroll before Pay Days (liquidated damages) (added at hearing)

**DATE OF HEARING:** September 29, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed on August 4, 2021, alleging that he was a salaried employee who was let go on July 8, 2021. He was not paid his full salary for the last pay period in which he worked, but was only paid for the days he worked. The claimant further alleged that he was entitled to holiday pay for July 4, 2021 but did not receive it. Notice of claim was sent to the employer on August 9, 2021. The employer filed an objection on August 11, 2021. The claimant requested a hearing and a hearing notice was sent on August 24, 2021.

On September 20, 2021, the Department received a check payable to the claimant in the amount of \$241.53, which was forwarded to the claimant as partial payment of the wage claim. At the start of the hearing, claimant acknowledged receipt of the check, and said that it satisfied his claim with respect to the unpaid holiday. However, he asserted that he should have received it within 72 hours of his termination on July 8, 2021. He also continued

to claim that he was entitled to his full salary for the last week in which he worked.

The claimant was advised that the statutory remedy for late payment of final wages is under RSA 275:44, IV (liquidated damages), and that that issue was not noticed for the hearing. Claimant indicated his intention to advance such a claim. The employer's representative indicated that, rather than having to attend a second hearing on this issue, he would prefer to have it considered at this hearing. Accordingly, the issue under RSA 275:44, IV was added without objection from either party.

### FINDINGS OF FACT

The following findings are based on the testimony of the claimant and the employer's representative, exhibits offered by the parties, and matters of record in the Department file. During the course of the hearing, both parties acknowledged under oath that their written submissions to the Department were true, and those statements are treated herein as part of the testimony in the case.

Claimant is 33 years old and, while working for the employer, lived in Manchester. He has a high-school diploma. He started working for the employer on April 5, 2021. He was a lead carpenter. He generally worked Monday through Friday and was paid a salary of \$1,320.00 per week. The pay periods ran from Sunday to Saturday and he was paid by direct deposit on the following Friday.

On Thursday, July 8, 2021, he was working at a jobsite in Athol, Massachusetts. The job involved renovations to an occupied residence. At around mid-day, claimant got into an altercation with another employee, a laborer. No one was physically assaulted but the exchange grew quite heated, such that the claimant told the laborer to get out and the claimant also left the jobsite to cool off, as he put it. Later that day, claimant was fired by a supervisor.

On July 8, 2021, claimant received a payment purporting to be his final wages. The payment did not represent his full salary. Instead, he was paid a pro-rated amount covering Tuesday, July 6 through Thursday, July 8, 2021. In a text message that day, he asked why he did not receive his full salary and the employer responded that he was only paid through the last day he worked. In a text message conversation on July 23, 2021, a company official acknowledged that the company owed the claimant for one additional day, Monday July 5, 2021, the holiday in observance of Independence Day. Claimant did not receive payment for the holiday until the Department forwarded him the check from the employer, some time after September 20, 2021. His payment for the holiday was \$264.00 gross, or \$241.53 after taxes and other deductions. Claimant has yet to receive his full salary for the last pay period in which he worked.

Christopher Zografos, 43, lives in Townsend, Massachusetts. He is the controller for the employer, and is in charge of its payroll. The employer has about 20 employees in New Hampshire. Mr. Zografos testified that he had no direct contact with the claimant, but was informed by claimant's supervisor that claimant was fired because he became involved in an altercation with another employee at a jobsite. He was told that the homeowner had called the employer and complained about the incident; according to what he was told, the homeowner had to physically intervene between claimant and the other employee, after which both individuals walked off the job.

Mr. Zografos testified that, because the claimant was fired under these circumstances, he was not entitled to his full salary but only for the three days he worked, July 6–8, 2021. He testified that claimant's final wages were paid to him on July 8, 2021. Mr. Zografos testified that he later realized that the claimant was also entitled to be paid for the observed Independence Day holiday, July 5, 2021. He testified that a check for that one day was mailed to the claimant at his Manchester address on July 14, 2021. He agreed that the claimant had been regularly paid by direct deposit, but stated that the employer's payroll system did not allow payments by direct deposit for the final paycheck after an employee was terminated. Also, the employer was not willing to have claimant come back in to the office to collect the check, given the circumstances of his termination.

In any event, the claimant never received the check. After the instant claim was filed, the employer cancelled that check and issued a new one, which it mailed to the Department. It was agreed that the check represents a net payment of claimant's regular salary prorated to one day for the holiday.

## 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.

Claim for unpaid salary. New Hampshire law generally requires that salaried employees "receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked," RSA 275:43-b, I. However, there are certain exceptions to this rule, one of which permits employers to prorate salary on a daily basis when an employee "is terminated for cause by the employer." RSA 275:43-b, II.

The Department standard for deciding whether a termination is "for cause" was established in Lakeshore Estates Associates LLC v. Michael F. Walsh (Belknap Super., 06–E–259, April 4, 2007). The Court held that, to constitute termination "for cause" as intended by RSA 275:43-b, II, the employer had to have had reasonable grounds for determining that the employee

engaged in misconduct meriting termination and "the employee must have received notice, express or fairly implied, that such misconduct would be grounds for termination."

In this case, it was not contested that the claimant was fired for engaging in an altercation with another employer at a jobsite. The claimant did not contest the employer's representation that the homeowner had to become involved to de-escalate the situation, or that the claimant left the jobsite to cool off. Such conduct has the potential for adverse consequences for the employer's business reputation, or worse. As such, it is found that the employer had reasonable grounds to believe that the claimant engaged in misconduct, and that the claimant knew or should have known that such conduct would be grounds for termination. Accordingly, it is found that the claimant was terminated for cause and therefore the employer was permitted to prorate the last week's salary to hours worked. Claimant failed to prove that he was entitled to his full week's salary for the last week in which he worked.

Claim for liquidated damages. RSA 275:44 provides, in pertinent part,

I. Whenever an employer discharges an employee, the employer shall pay the employee's wages in full within 72 hours. \* \* \*

IV. If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller. \* \* \*

Pursuant to paragraph IV, an award of liquidated damages for improper withholding of wages requires a finding that the employer acted "willfully and without good cause." Our Supreme Court has construed this expression as a unitary phrase, meaning "voluntarily, with knowledge that the wages are owed and despite financial ability to pay them." Ives v. Manchester Subaru, Inc. (N.H. 1985).

That standard is satisfied in this case. The statutory requirement of payment within 72 hours of discharge is plain and simple. The employer's controller testified that the check was not mailed until July 14, 2021—three days after it was due. For reasons unknown, the claimant never received that check and the employer had to issue a stop payment and send a replacement check to the Department. The claimant should not be held responsible for internal communications problems within the employer's office.

The bottom line is that the claimant was entitled to be paid on or before July 11, 2021. This could have been accomplished through direct deposit, in-hand delivery, courier, or other means. The controller acknowledged that there were communication issues between his department and the individuals who dealt directly with the claimant. As he put it, if the claimant had contacted him,

he would have received his payment closer to July 14. But it was not the claimant's duty to reach out to the controller's office to ensure that he received his last wages in timely fashion. It is therefore found that the delay in receiving his full final wages was the employer's fault, willful and without good cause.

For each countable day upon which the unpaid wages remained unpaid, after the day when the 72-hour time limit expired, damages accrued at ten percent of the total due, i.e., \$26.40, up to a maximum amount equal to the wages due. More than ten countable days elapsed; therefore, the employer is liable for the maximum amount, \$264.00, in liquidated damages.

### DECISION

Based on the testimony and evidence in the case, and the above findings, it is found that the claimant was not timely paid his final wages and that the employer's failure to pay such wages continued for more than ten business days excluding Sundays and holidays. It is further found that the employer's failure to pay the claimant in time was willful and without good cause. The claimant's claim for liquidated damages is **valid** to the extent of \$264.00.

The employer is hereby ordered to send a check to this Department, payable to ██████████ in the amount of \$264.00 within 30 days of the date of this Order. This assessment represents a penalty rather than wages and therefore no deductions should be made from the amount due.

October 14, 2021  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/cb