

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.
Haratimaa Inc.

Case No. 63284

DECISION OF THE HEARING OFFICER

Appearances: ██████████ claimant, on her own behalf, Pro Se
Employer- Failed to Appear

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

Date of Hearing: November 23, 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 she is owed \$340.00 in unpaid salary.

The claimant filed a Wage Claim with the Department on August 10, 2021. The employer failed to file an objection. The claimant requested a formal hearing on the claim. Hearing Notices were forwarded to the parties on October 15, 2021, and a Hearing was scheduled at the Department on November 23, 2021. On November 19, 2021, the employer called and emailed the Department and requested information on the matter. The employer also requested a continuance due to "other obligations". On November 19, 2021, the motion to continue was denied. The parties were instructed to appear for the November 23, 2021 hearing.

The hearing was scheduled for 9:45AM. 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 10:00am and proceeded with the sworn testimony of the claimant.

During the course of the hearing, the claimant submitted payroll records into evidence. The documents had not been previously exchanged with the employer. However, pursuant to Lab 204.06 it is determined that they would be accepted despite their untimeliness. Specifically, they are records of the employer. The employer should maintain these documents in its normal course. The employer should be familiar with

the documents. The admittance of the documents would promote a just and accurate result.

FINDINGS OF FACT

The employer is a convenience store in Hudson NH. The claimant has worked at the convenience store on two separate occasions. In early 2021 the claimant was employed on an hourly basis. The claimant stopped working in February 2021.

The claimant returned to the employer in June 2021. The claimant asserts that she was to be paid \$700 per week in salary. The claimant submitted a payroll statement/accounting from ADP. The Payroll indicates that when she returned to work in June 2021 she was paid a gross of \$700.00 per week regardless of hours. Specifically there were no hours called in for her paychecks.

The claimant received 5 weeks of paychecks for the gross wages of \$700.00. Per the ADP accounting, beginning the week of July 15, 2021, the claimant received a gross weekly wage of \$630.00 for two weeks. The claimant's last week she received a gross wage of \$504.00. The claimant submitted an earning statement for the week ending July 15, 2021. The earning statement indicates gross pay of \$630.00 with 0 hours recorded. On "important notes", the paycheck states "salaried".

The claimant's last pay week was July 29, 2021. The workweek was Friday to Thursday. The claimant acknowledged that during her last week of work she did not work the final Thursday.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she 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 \$700.00. The claimant was paid weekly. A salaried employee is entitled for his/her entire salary for a pay period unless he/she terminates his/her own employment or is terminated for cause by the employer. See RSA 275:43- b (II).

In this case, it is unclear whether or not the claimant quit her job or was terminated from her position. It appears that the claimant informed the employer that she disagreed with the reduction in pay. When there was no resolution that she would be returned to her \$700.00 per week salary, the claimant determined that she would not return to work for the employer.

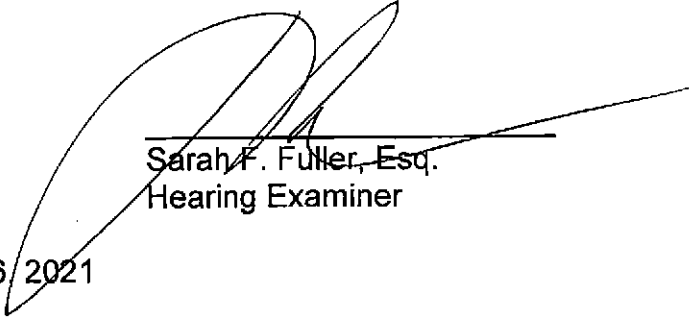
There is evidence presented for the week ending in July 15 and July 22 that the claimant worked her salaried employment and was not paid her \$700.00 salary. The claimant is entitled to the owed wages for this week of \$140.00. Determining what the claimant is owed her final week is slightly more complicated. If the claimant quit her job prior to the end of the pay period, the employer is entitled to prorate her salary. The proration would be \$100.00 per day.

The claimant testified that she did not work the final Thursday. There was no testimony that the claimant was fired. The testimony was that the claimant refused to work for the reduced wages of \$630.00. Therefore, it is determined that the employer was entitled to prorate the claimant's salary by one day. The weekly salary prorated equates to \$100 per day. Therefore, for the claimant's final week of employment the employer was entitled to prorate from \$700 gross wages to \$600.00 gross wages.. The employer paid the claimant \$504.00. Therefore, the claimant is entitled to the additional \$96.00 in unpaid wages.

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 she was not paid her full salary for the weekly pay period of July 15, 2021 and July 22, 2021 and she is owed additional wages. The additional wages for July 15, 2021 and July 22, 2021 are \$140.00. The claimant is also entitled to an additional \$96.00 for unpaid wages the week of July 29, 2021 for the reasons stated above. It is hereby ruled that the claimant is owed \$236.00 in unpaid wages.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the amount of \$236.00 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 F. Fuller, Esq.
Hearing Examiner

Date of Decision: December 6, 2021

SFF/cb