

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE



v.

East Coast Service Industry Companies, Inc.  
d/b/a Whiskeys 20  
CASE #63307

**DECISION OF THE HEARING OFFICER**

**APPEARANCES:** Claimant, self-represented  
Thomas Svoleantopoulos

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid wages)

**DATE OF HEARING:** October 19, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed on August 23, 2021, alleging that he worked at the employer's restaurant/lounge in Manchester starting in November 2019, twenty hours per week, from November 14, 2019 to March 8, 2020. He claimed that he did not receive his base pay. His claim was for \$2,000.00. Notice of claim was sent to the employer on August 26, 2021. The employer filed an objection on September 15, 2021. The claimant requested a hearing and a hearing notice was sent on August 24, 2021.

**FINDINGS OF FACT**

The following findings are based on the testimony of the claimant, employer's representative, exhibits offered by both 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 accurate to the best of their knowledge and belief, and those submissions are treated herein as part of the evidence in the case.

Claimant is [REDACTED] years old and lives in [REDACTED]. He has a bachelor of arts degree in business from the University of New Hampshire, awarded in 2019. Since that time he has worked in the night life industry and the insurance business. He was hired in November 2019 to work as a barback at the employer's restaurant-lounge in Manchester. His first day at work was

November 14, 2019. He was paid \$8.00 an hour plus tips. He worked nights, Thursdays through Saturdays, from around 8:00 p.m. to 3:00 a.m., an average of 20 hours a week. His job involved keeping the bar stocked and cleaning up as needed. When he first started, he recorded his hours on time sheets, but in early December he was set up with access to an online punch-in system for tracking hours worked. He testified that over the 16 weeks from November 14, 2019 through March 8, 2020, he worked a total of 320 hours.

Claimant testified that he did not receive regular payroll checks. He was told he needed to complete the paperwork in order to get on the formal payroll. He did acknowledge receiving two handwritten checks: On November 30, 2019, he received check #1085 dated for \$282.39. In the memo field was written, "Payroll 32 hours," Er. Exh. 2.1. On December 17, 2019, he received check #1099 dated December 17, 2019 for \$111.55; the memo field said, "Payroll," Er. Exh. 2.2. Neither check was accompanied by documentation indicating rate of pay, deductions for taxes and withholding, etc.

Claimant did not complete a payroll form and a W-4 certificate until March 5, 2020. The payroll form described him as a new hire, date of hire March 5, 2020, job title barback, pay rate \$8.00 per hour, pay frequency bi-weekly, and supervisor Lance (last name illegible). Er. Exh. 1.1, 1.2.

Claimant resigned on March 8, 2020. The employer closed the restaurant/lounge shortly after that due to Governor Sununu's COVID-19 shutdown order. Claimant testified that he did not receive any further payment from the employer until October 10, 2020, when he received payroll check #13014 for \$560.00 before deductions. The paystub showed a hire date of March 5, 2020 and described the current earnings as "Retro pay" for 70 hours at \$8.00 an hour. The paystub further indicated that claimant had previously been paid \$320.00 in regular earnings, and that his gross year-to-date earnings were \$880.00. Er. Exh. 2.4.

On cross examination, claimant was shown a paystub for a check #12724 dated March 7, 2020, covering the pay period from February 16–29, 2021, for 40 hours work at \$8.00 per hour, totaling \$320.00 before deductions. Er. Exh. 2.3. The claimant denied ever receiving this check. He said that after he quit and the business closed down due to COVID-19, he asked Lance to mail him his final paycheck, but he never received it.

Claimant submitted text messages between himself and his supervisor, Lance. The messages started December 4, 2019 and continued up to April 23, 2020. The messages document that the claimant was set up with access to the time-tracking system as of December 4, he was on the regular work schedule for Thursday through Saturdays, he was sometimes asked to come in early (5 p.m. or 7 p.m.), and that he was receiving cash tips. Cl. Exh Tab "Lance."

Claimant also submitted text messages between himself and Thomas Svoleantopoulos, the employer's director. The messages span the period of time from December 16, 2019 through July 2021 with some large gaps in time. Cl. Exh. Tab "Tommy." The December 2019 messages document that claimant's duties included cleaning the bathrooms, that the director had a check for the claimant to pick up on December 16, 2019, that the claimant couldn't attend a meeting on December 30, 2019, and that the claimant purchased \$443.00 worth of liquor for the bar.

The September 2020 messages document that the claimant was trying to explain to the director the wages he alleged he was owed. On Tuesday, September 29, 2020, claimant texted:

Started Thursday November 14th  
Ended Saturday, March 8th  
Worked every weekend, only took 1 day off. In  
at 8pm pretty much every shift. Out at 3-  
3:30am every shift.  
I was punching in and out for much of my time  
there. Before I was in the system I was doing  
the timesheets and putting them right outside  
your office, where they told me to put them.

The director's responses indicate that he was going to investigate the matter but it would take some time. He eventually got back to the claimant and said that it looked like the claimant was owed for 70 hours. (It is understood that shortly after this exchange, claimant received the October 10, 2020 check #13014 for 70 hours' work.)

Sometime later, claimant texted to the director that paying for the 70 hours of the 320 he worked left 250 hours unpaid. The director texted back,

Ok thank you.  
Do you have any of your punch in receipts?

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You need to take some accountability for not  
clocking in, like ever. I jumped all over this the  
first time you mentioned it and now you want to  
threaten me?

Claimant continued to text the director asking when he would be paid, up through July 12, 2021.

Thomas Svoleantopoulos, 48, is the employer's director. He started the business about five years ago; he ran a restaurant/lounge at 20 Old Granite Street in Manchester under the trade name Whiskeys 20. It had about 30-40 employees. He testified that he had closed the business due to COVID-19. Another, unrelated entity named Soho now operates there.

The director testified he did not have a lot of direct dealings with the claimant on day-to-day matters such as work schedules; a supervisor named Lance did that. The director believed that the claimant had been fully paid for hours worked. He submitted exhibits documenting that the company had issued four payments to the claimant, as follows:

CHECK DESCRIPTION	AMOUNT	CHECK DATE
Check #1085	\$282.39	November 30, 2019
Check #1099	\$111.55	December 17, 2019
Payroll check #12724	\$320.00	March 7, 2020
"Retro" payroll check #13014	\$560.00	October 10, 2020
<b>TOTAL</b>	<b>\$1,273.94</b>	

Er. Exh. 2.1–2.4. The first two checks were handwritten and did not come with annotated payroll deductions. The first one had "Payroll 32 hrs" written in the memo field; the second one just said "Payroll" in the memo field.

### DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that he 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. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

Evidence of payment. According to the testimony of the employer's director, claimant has been paid a total of \$1,273.94.<sup>1</sup> The claimant did not dispute that he received the November 30 and December 17, 2019 handwritten checks and the October 10, 2020 retroactive payroll check. However, he denied ever receiving the March 7, 2020 check. The employer offered no documentary evidence to show that the March 7, 2020 check was ever actually cashed.

Claimant's text messages to Lance corroborated his testimony that on March 30, 2020, Lance promised to mail him his last check "the next time I'm in the office"; on April 23, 2020 claimant was still asking for the check. It is not doubted that the March 7, 2020 check was actually cut for the claimant; however, claimant's unrebutted testimony is credited that he never received it. Thus it is found that, over the course of his employment, the claimant received only three checks totaling of \$953.94, in payment of wages over the course of his employment.

<sup>1</sup> The employer alleged that the claimant was overpaid in the first paycheck because he did not work 32 hours during the first pay period. Even if true, an accidental overpayment would not entitle an employer to seek recoupment by withholding future wages unless the employee had specifically authorized recoupment in writing, in advance. There was no evidence that the claimant ever gave such an authorization. RSA 275:48, I(d)(4).

Evidence of hours worked. Claimant testified that over the course of his 16 weeks' employment, he worked 20 hours a week for a total of 320 hours. No reason was found to discredit this testimony.

Employers are required to maintain time records for their hourly employees. In this case, none were produced. No proper payroll stubs were produced for the time from November 14, 2019 up through February 15, 2020. An employer's failure to produce time records and payroll records does not relieve the claimant of his burden to prove the hours he worked. However, considering all the evidence in this case, it is found that the claimant met his burden of proving that he worked a total of 320 hours over the 16 weeks of employment.

At \$8.00 per hour, he earned \$2,560.00. However, as discussed earlier, the claimant was paid only \$953.94. He is therefore owed an additional \$1,606.06.

In reaching this result, the hearing officer acknowledges that the director had no intent to avoid paying the claimant his due wages. The claimant left the company about the time the COVID-19 shutdown started. The business closed, personnel left and new personnel came on; and records were placed in storage. The director's testimony that he did his best to investigate the claim is credited. Nevertheless, the claimant met his burden of proof in this matter.

### 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 this Department finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,606.06.

The employer is hereby ordered to send a check to the Department of Labor, payable to ██████████, in the amount of \$1,606.06, less any applicable taxes, within 30 days of the date of this Order

November 08, 2021  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/sw