

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

Keisy Inc. dba Steve's Diner¹

Case No. 63487

DECISION OF THE HEARING OFFICER

Appearances: █ on his own behalf, Pro Se
Ms. Ledia Duka, on behalf of the employer

Nature of Dispute: RSA 275:48 I – Withholding of Wages, Illegal Deduction from Wages

Date of Hearing: November 23, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

Based on the claimant's assertion that he is owed \$400.00 in illegal deductions from wages, he filed a Wage Claim with the New Hampshire Department of Labor (DOL) on September 20, 2021. A Notice of Wage Claim was forwarded to the employer on September 22, 2021. On September 25, 2021, the employer filed an objection to the wage claim. The claimant requested a formal hearing. A formal telephonic hearing was conducted on November 23, 2021.

FINDINGS OF FACT

The claimant resides in Barrington, NH. The employer runs a diner in Exeter, NH. The claimant worked as a cook for the employer. His employment began in April 2019. The employment ended in September 2021.

The claimant asserts that he was paid \$15.00 an hour and worked Tuesday to Saturday. When he worked Sundays, he was paid cash at the end of the day. In the summer of 2021, the claimant asserts he borrowed \$500.00 from his boss (Mr. Duka) to fix his truck. He agreed that the employer could take \$100.00 out of his paycheck for five weeks until the debt was paid off. He did not sign any paperwork. The claimant asserts that after he paid the employer back the \$500.00 the employer continued to take \$100 from his paycheck. The claimant asserts that from his last paycheck the employer took \$200.00. The claimant also recalls paying the employer \$100.00 in cash one week because the employer forgot to take the money out of his paycheck. The claimant believes the employer recouped \$800.00 for the \$500.00 debt.

Mrs. Duka owns the diner with her husband. Mrs. Duka agreed that her husband gave the claimant money to fix his truck. Mrs. Duka asserts that the loan was for \$2,000.00 and not \$500.00. The terms of the loan were that each week \$100.00 would be withdrawn from the claimant's paycheck. Mrs. Duka agreed that one week the claimant gave her cash. Mrs. Duka

¹ At the time of Hearing, the employer stated that the accurate name of the entity was Keisy Inc. dba Steve's Diner.

agreed that from the claimant's last check she withdrew \$200.00. At the time, she withdrew the \$200.00, Mrs. Duka asserts that the claimant had only paid \$600.00 and that she wanted to recoup the most she could because she would remain at a loss. The employer asserts that the claimant continues to owe it \$1200.00 for the unpaid loan. Mrs. Duka agreed that the employer did not have a written agreement to perform the payroll deductions.

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 and due \$400.00 in illegal deductions from wages. 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.

Applicable law governing illegal deductions from wages is New Hampshire RSA 275:48 (I), which states, in part:

No employer may withhold or divert any portion of an employee's wages unless:
(a) the employer is required or empowered to do so by state or federal law, including payroll taxes.
(b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner.

In this matter, the evidence is undisputed that the employer did not have a written agreement with the claimant to perform the deductions from his wages for the loan repayment. Therefore, the withholding of the wages is not authorized under the law. Technically, the claimant would be entitled to repayment of all of the payroll deductions for the loan, due to the employer's failure to get a written authorization. However, the claimant has requested repayment of the money he paid over \$500.00. From the testimony provided by both parties, it is found that the employer collected \$800.00 for repayment of the loan through wage deductions. Because the claimant is only requesting that payment over \$500.00 be returned to him, the illegal deduction will be limited to \$300.00.

DECISION


After a thorough consideration of the evidence and testimony presented, and as RSA 275:43 (I) requires that an employer pay an employee all wages that are owed and due, it is found that the claimant has successfully met his burden to prove by a preponderance of the evidence that he is owed for unpaid wages; it is hereby ruled that **this Wage Claim is valid in the amount of \$300.00.**

The employer is hereby ordered to send a check to the Department of Labor, payable to [REDACTED] in the total of **\$300.00**, less applicable taxes with a statement of said deductions, **within thirty (30) days of the date of this Order.**

Page No: 3

December 6, 2021
Date of Decision

SFF/cb



Sarah F. Fuller, Esq. Hearing Examiner