

that promised him the higher pay at a different bank. Mr. Oliveri explained that the original job had been filled but he would increase the claimant's salary so it would equal \$23.00 per hour.

The claimant presented his cell phone showing his paychecks for the five weeks he worked at Allied Universal Security. The first week he was paid \$19.50 per hour. Thereafter he was consistently and erratically paid in excess of \$19.50 per hour. The claimant testified that he repeatedly asked for an explanation of the manner he was being compensated. He was only told that the goal is to bring his wages up to \$23.00 per hour. After five weeks of employment and never being fully paid the \$23.00 per hour he was promised the claimant resigned.

The claimant worked a total of 197 hours. He was paid \$3,930.59. His average hourly wage was \$19.95 per hour. The claim is for the difference between what he was promised (\$23.00 per hour) and what he was actually paid (\$19.95) = \$3.05 per hour, times the hours worked, 197 = \$600.85.

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. Here there can be no doubt that the claimant is entitled to \$23.00 per hour for the first week of employment. However, he was only paid \$19.50 per hour. The question then becomes whether he agreed to accept less than \$23.00 per hour by continuing to work the next four weeks for less than his written agreement at orientation provided for.

Lab 803.03 Notification and Records states:

(a) Every employer shall at the time of hiring and prior to any changes notify his or her employees in writing as to the rate of pay or salary, whether by daily, weekly, biweekly, semi-monthly, or yearly, or by commissions, as well as the day and place of payment and the specific methods used to determine wages due pursuant to RSA 275: 49.

(c) Pursuant to "RSA 275:49, every employer shall inform his" or her employees in writing of any change to such employees rate of pay, salary, or employment practices or policies as referred to in Lab 803.03 (a) and (b) prior to the effective date of such change.


There was no evidence that the employer complied with this regulation. Rather, the unchallenged testimony is that the claimant did not agree to accept less than \$23.00 per hour and the employer continued to make efforts to honor that agreement. The paycheck history corroborates the claimant's unchallenged testimony.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, this Department finds that the claimant proved by a preponderance of the evidence that he was not paid the wages he was due. It is hereby ruled that the claimant is owed \$600.85 in unpaid wages.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the amount of \$600.85 within 30 days of the date of this Order. Applicable taxes, with a statement of such deductions, may be deducted from the owed wages.

Dated: October 24, 2022



David I. Bailinson, Esq., Hearing Officer

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