

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

SAS Retail Services
CASE #22-WG-00138

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented
Valerie Sparks, representing Employer

NATURE OF DISPUTE: RSA 275:43-b — Payment of Salaried Employees
(unpaid salary)

DATE OF HEARING: December 21, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

In a wage claim filed on September 29, 2022, subsequently amended, Claimant alleged that she was not paid her salary for the biweekly pay period from August 14–27 in the amount of \$1,905.96. Employer objected and claimant requested a hearing. Notice of hearing was sent to parties on Nov. 29, 2022.

FINDINGS OF FACT

The following findings are based on the testimony of Claimant and Employer's representative Valerie Sparks, Employer's exhibits, and matters of record in the Department file. Ms. Sparks appeared telephonically from Employer's headquarters in California.

Claimant is 57 years old and lives in Londonderry. She has a high school diploma. Before working for the Employer, she was a school bus driver for seven years and before that worked in office administration. For the employer, she was a district supervisor for New England. Her personnel file shows a hire date of September 1, 2021 and an adjusted service date of September 25, 2009. Er-Exh. A.

Claimant was a salaried employee. She was paid biweekly in the gross amount of \$1,905.96. Pay periods ran from Sunday to Saturday. Claimant was

paid by direct deposit, every other Friday. She also received reimbursement for mileage.

On Monday, August 15, 2022, claimant gave written notice that, for personal reasons, she was quitting at the end of the week. She did no work after August 19. On Friday, August 19, Claimant received her regular biweekly salary amount of \$1,905.96. On September 2, 2022, she received another payment of \$270.00 as an expense reimbursement.

Claimant testified that the August 19 payment covered the biweekly pay period starting July 31. She did not receive a check for the pay period starting August 14, which she testified was due on Friday, September 2. She testified that she subsequently requested a copy of her final paystub but had not received one from Employer.

Employer's exhibits included (A) documents from Claimant's personnel file, (B) Claimant's resignation letter, (C) two paystubs, one for earnings & the other for expense reimbursement, and (D) a table showing Employer's pay periods for 2022.

Claimant did not contest the authenticity of the Employer's exhibits. However, she disagreed with the pay period that was shown on the earnings paystub, Er-Exh. C at 1.

She also did not agree that the Employer's pay-period chart for 2022 was accurate. Claimant testified that, to her recollection, the regular biweekly Friday pay checks had always been for work done during the preceding pay period, not the one that ended on the following Sunday.

She testified that Employer had an online portal where she could review her pay stubs but she had never had occasion to use it. After she quit, she no longer had access to the online portal. She had requested paystubs but had not received them.

Valerie Sparks, 67, of Costa Mesa, California, is Employer's human relations team leader. She has worked for the Employer for seven years. The Employer has around 25,000 employees nationwide. Its business is providing retail-reset services to large retailers.

Ms. Sparks testified that the paycheck that Claimant received on Friday, August 19 covered the pay period August 8–20, i.e., the last pay period during which Claimant worked. In effect, Claimant was paid one day before the end of the pay period. Ms. Sparks explained that the reason the Claimant did not receive an earnings check on September 2, 2022 was that her employment formally ended prior to the start of the corresponding pay period August 22–September 4 and she did no work for the employer during that period. The

expenses reimbursements (not contested by Claimant) were paid after the pay period in which they were submitted.

Ms. Sparks's testimony regarding the August 19 payment was corroborated by the earnings paystub included in Employer's exhibits. According to the August 19 paystub, Er-Exh. C at 1, the payment of \$1,905.96 was for the time period August 8–21. Ms. Sparks's testimony was also corroborated by the Employer's pay-period chart for 2022, Er-Exh. D. Ms. Sparks testified that the pay-period chart for 2022 was available to current employees through an online employee portal, as were the paystubs. She did not disagree that Claimant could not access this information after her employment ended.

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. 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).

The essential factual dispute in this case is whether the August 19 payment the Claimant received was for the biweekly pay period July 31–August 13, as Claimant maintains, or for the biweekly pay period August 14–27, as Ms. Sparks testified and as Employer's exhibits corroborate.

Claimant had no corroborating evidence that the biweekly paydays occurred after the pay periods ended. She had hand-written notes and bank statements, which were not offered in evidence. In any event, she did not explain and it is not apparent how the bank statements would resolve the question of which pay period was covered by a given deposit.

Claimant testified that it was the practice of the company in the past to pay after the pay period. The Employer's evidence suggested that Claimant used to work for the employer prior to her most recent hire date. Thus, claimant may have been correct as to the Employer's payroll practices in earlier years.

Be that as it may, the Employer's evidence as to the applicable pay periods in 2022 is credited. Also, Ms. Sparks's testimony that the pay period chart and pay stub information were available to the Claimant while she worked there is also credited. Thus, there is no basis for a finding that the Claimant was misled as to the applicable pay periods.

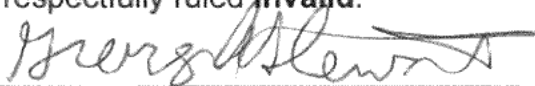
It is therefore found that the payment Claimant received on August 19 covered the last pay period during which she worked, and she was not entitled to a further salary payment after that.

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 the Department finds that Claimant was paid her full salary for the last pay period in which she worked, Claimant failed to prove by a preponderance of the evidence that she was owed additional wages/salary.

The wage claim is therefore respectfully ruled **invalid**.

January 19, 2023
Date of Decision


George A. Stewart, Hearing Officer

GAS/nd