

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

United Parcel Service, Inc.
CASE #22-WG-00208

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ self-represented
Employer, self-represented, did not appear for the hearing

NATURE OF DISPUTE: RSA 275:44, IV — Employees Separated from Payroll before Pay Days

DATE OF HEARING: December 14, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

Claimant filed a wage claim on October 28, 2022, alleging that he was underpaid his wages for the week ending October 8 and due on October 14. He was not paid the underpaid amount until October 28, 2022. He seeks an award of liquidated damages equal to the amount of the underpayment, \$272.13.

Notice of the claim was sent to Employer on October 31. Employer's representative Pamela Koutroulis filed an objection to the claim. Claimant requested a hearing on November 16. Notice of hearing was sent on November 21, 2022.

At the appointed hour for the hearing, no representative for the Employer appeared. Review of the Department file indicated that the hearing notice sent to the Employer was not returned undelivered. It was determined that Employer received proper notice of the hearing. After waiting 15 minutes, the hearing proceeded in Employer's absence pursuant to Department Administrative Rule Lab 203.04.

FINDINGS OF FACT

The following findings are based on Claimant's testimony and exhibits and matters of record in the Department file.

Claimant is 28 years old and lives in Rochester. He has a college degree in ship mechanics from Suez Canal University in Egypt. He has worked for the Employer's parcel delivery service, Stratham office, since June 15, 2017. He started as a package handler and later was promoted to delivery driver.

Claimant generally works four days a week. His hourly rate of pay is \$35.94 when he works on express delivery or as a shifter. However, when he works on ground delivery, his hourly rate of pay is \$41.46. When he turns in his hours, he specifies whether he was working express/shifter or ground delivery.

Claimant is paid weekly by direct deposit. Pay periods run from Sunday to Saturday. Payday is the following Friday. Using an online portal, Claimant is able to preview his paystub the day before payday.

The week ending August 8, Claimant worked all four days on ground delivery. He turned in his hours and reported that the work was ground delivery. When he checked his paystub on August 13, he saw that the employer was paying him at the lower, express-deliver/shifter rate. As a result of the error, he was underpaid to the extent of \$272.13.

He reported the error to the Employer on October 13. On October 28, he received payment of the remaining amount that was due for the week ending August 8.

Claimant testified that, pursuant to the Union contract, in cases of underpayment, Employer was obligated to pay him an additional amount based on the number of weeks that passed before he received the full amount due. He said that, pursuant to the Union contract, he was entitled to damages in an amount that was proportional to the length of the delay in receiving his wages due. He said that, Using the Union contract formula, he was entitled to \$287.52 in damages

Claimant testified that he had filed a grievance with the Employer and the grievance had been refused or denied. He continues to work for Employer.

DISCUSSION AND CONCLUSIONS

To the extent that the Claimant is seeking an award of liquidated damages pursuant to RSA 275:44, IV, those damages are not available to employees in good standing. They are only available to employees who have been discharged or otherwise separated from employment and are claiming that their final wages were not paid within the applicable time limits provided in RSA 274:44, I, II, or III.


At the hearing, Claimant confirmed that he continues to work for the Employer and that the disputed amount was not his final wages. Accordingly, he is not eligible for an award of liquidated damages.

To the extent that the Claimant is seeking enforcement of provisions of the collective bargaining agreement between the Union and Employer, the Department lacks jurisdiction over such a claim. That is a matter the Claimant must pursue with the Union representative according to the procedures outlined in the CBA.

DECISION

As RSA 275:44, IV allows for an award of liquidated damages to a separated employee when the employer willfully and without good cause fails to pay the employee's final wages within the applicable time limits, and the Claimant was not separated from employment and did not experience a delay in receipt of his final wages, his claim under that statute is found to be **invalid** and is respectfully dismissed.

January 9, 2023
Date of Decision


George A. Stewart, Hearing Officer

GAS/nd