

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

██████████  
v.

MARKET BASKET

CASE NO. 22-WG-00210

DECISION OF THE HEARING OFFICER

**Appearances:** ██████████ the claimant appeared Pro Se.

Dan Salois, store director appeared on behalf of the Employer

**Nature of Dispute:** RSA 275:43 I - Weekly, Unpaid Wages

**Employer:** Market Basket

**Date of Hearing:** December 15, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on October 21, 2022, asserting that he is due wages in the amount of \$34.76 for unpaid gross wages. The employer was notified by the Department of Labor (DOL) of the initial claim via letter dated October 31, 2022. The employer filed an objection on November 3, 2022 asserting Mr. ██████████ had been paid properly. Following this objection Mr. ██████████ requested a hearing on the matter. A hearing was then scheduled accordingly for review of the claimant's claim for unpaid wages on December 15, 2022 at 9:45 am via telephone and went forward as planned.

FINDINGS OF FACT

██████████ (Mr. ██████████) was hired by Market Basket on or about September 16, 2022. He was hired as a "sacker" and paid \$13.50 per hour.

Testimony of Mr. ██████████

Mr. ██████████ testified that he was hired as a full-time sacker and worked 40-42 hours per week. See *claimant's 2,3*. Mr. ██████████ testified that he worked on the Columbus Day Holiday and should have been paid 1.5 times his hourly rate (\$20.25) per the Market Basket Rules on Holiday Pay. However, he was paid at 1.1 times his hourly rate (\$14.85) for the hours he worked. See *claimant's 1*.

Testimony of Dan Salois:

Dan Salois (Mr. Salois) has been employed by Market Basket for about 40 years and is currently the store director at the location where Mr. ██████████ worked.

Mr. Salois testified that Market Basket's policy is to hire employees on a part-time basis at first. The employees are then given the opportunity to prove themselves and apply internally for full-time positions when they become available. Mr. Salois further testified that based on the information submitted with the employer's objection Mr. ██████████ did not work an average of 40-42 hours per week but 34.35 hours per week. Mr. Salois testified that Mr. ██████████ only worked 40 or more hours twice over the five-week period submitted with the employer's objections.

Mr. Salois further testified that while part-time employees are scheduled for less than 40 hours, it has always been the policy of Market Basket to allow part time employees to work additional hours if the store is busy enough and they are willing. Mr. Salois testified that this is why Mr. ██████████ pay stubs show 40 hours or more. Mr. Salois further noted that when business is slow, employees who wish to may leave early.

Mr. Salois further testified that the Market Basket Policy on Holiday Pay is that full-time employees are paid 1.5 times their hourly rate. Mr. Salois further testified that part-time employees are paid at 1.1 times their hourly rate for holiday hours. Mr. Salois testified that he had explained this to Mr. ██████████ previously. Mr. Salois further testified that this information is available to employees via an employee handbook.

### **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 unpaid 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.

The claimant argued that he was owed 1.5 times his hourly pay for holiday hours worked. The claimant further argued that the hours he worked proved that he was a full-time employee.

The employer argued that the claimant was correctly paid the 1.1 times his salary for the holiday hours he worked. The employer also argued that the claimant is not a full-time employee.

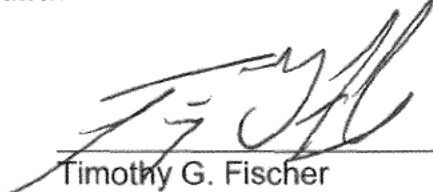
The employer's argument that the claimant is not a full-time employee is persuasive. The employer's objection included a printout of a five-week period showing how many hours the claimant worked. Over these five weeks the claimant worked as many as 42 hours and as few as 19, with an average of 34.35 hours per week which is less than full time. Furthermore, the employer submitted a printout of the claimant's internal fact sheet which lists his grade as "PT Associates (Non-Deli)". Given this information the claimant is a part-time employee.

The claimant's argument that he was owed 1.5 times his hourly pay for holiday hours worked is not persuasive. The employer's objection noted that part-time employees are paid at 1.1 times their normal hourly rate for holiday hours worked. The submitted paystub from the claimant showed he worked 6.75 holiday hours and was paid \$100.24 for this time. See *claimant's 1*. This comes out to \$14.85 per hour which is 1.1 times the \$13.50 per hour the claimant was usually paid.

**DECISION**

Based on the evidence and testimony presented, the claimant has not shown by a preponderance of the evidence that he was owed wages for hours worked. The claimant's request for payment of unpaid wages is therefore respectfully denied.

This wage claim was found to be **invalid**.

  
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Timothy G. Fischer  
Hearing Officer

Date of Decision: January 9, 2022

TGF/nd