

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Sanitary Drycleaners

Case No. 23-WG-00444

DECISION OF THE HEARING OFFICER

Appearances:

[REDACTED] claimant

Employer:

Erika Swenson, employer

Nature of Dispute:

RSA 275:43 I – Weekly, Unpaid Wages (Removed at Hearing)

RSA 279:26-B – Tip Pooling and Sharing

Date of Hearing:

April 4, 2023

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages due to her. Specifically, the claimant asserts that she is owed wages for gratuities which were not disbursed to her.

The claimant filed a wage claim with the Department on February 17, 2023 for \$255.00 in unpaid wages. The wage claim also adds an unspecified value of gratuities which the claimant wrote that the employer stated were the claimant's and had not been received by the claimant. A Notice of Wage Claim was forwarded to the employer on February 17, 2023. The employer failed to respond to the wage claim notice. The claimant requested hearing on March 3, 2023. Hearing Notices were forwarded to the parties on March 10, 2023.

At the hearing the claimant testified that she had received her wages. RSA 275:43 I was removed by the hearing officer.

FINDINGS OF FACT

The employer is a drycleaner in Laconia, New Hampshire. The claimant worked as a presser for approximately four months from October 13, 2022 to February 6, 2023 when she was terminated for disrespect toward the employer. The claimant testified she worked four days per week.

The claimant testified that while she was employed she noticed a tip jar on the service counter and began to question the employer regarding the disbursement of the tips. She confronted the employer about the issue on February 6, 2023 and was subsequently fired. The claimant testified that she believed she was entitled to a share of

the gratuities but had no idea of the amount. The claimant testified that she was never told by the employer or anyone else that she would receive gratuities as a condition of her employment and that there was no policy on tip sharing made known to her.

The claimant testified that the employer told her that the tips were shared among the front desk employees. The claimant testified she had seen envelopes with other employees' names on them. The wage claim was that the employer told the claimant she had an envelope of tips coming to her that she never received.

The employer testified that she never told the claimant she would receive gratuities and that she never mandated tip sharing. The employer testified that she never told the claimant she had an envelope of tips coming to her. The employer testified that the reason the claimant may have seen envelopes with other employees' names on them was that the front desk employees received tips and shared them with other employees at their discretion per RSA 279:26-B. The employer cited RSA 279:26-B as the reason she never set a tip policy.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she 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.

Regarding tip pooling and sharing, New Hampshire law is clear that tips are considered wages and are the property of the employee who earns them.

RSA 279:26-b Tip Pooling and Sharing states in its entirety:

I. Tips are wages and shall be the property of the employee receiving the tip and shall be retained by the employee, *unless the employee voluntarily and without coercion from his or her employer agrees to participate in a tip pooling or tip sharing arrangement.* (emphasis added)

II. No employer is precluded from administering a valid tip pooling or tip sharing arrangement at the request of the employee, including suggesting reasonable and customary practices, and mediating disputes between employees regarding a valid tip pooling or tip sharing arrangement.

III. Nothing shall preclude employee participants in a tip pool from agreeing, *voluntarily and without coercion*, to provide a portion of the common pool to other employees, regardless of job category, who participated in providing service to customers. (emphasis added)

In this case there was no testimony or evidence the tip pooling arrangement was coerced. There was no testimony or evidence the tip pooling arrangement was involuntary. The claimant offered no evidence to prove that an envelope left for her by a front desk employee was not paid to her.

Under RSA 279:26-B, quoted in its entirety above, tip pooling and sharing is not illegal in New Hampshire provided it is voluntary and not coerced. The policy does not have to be in writing.

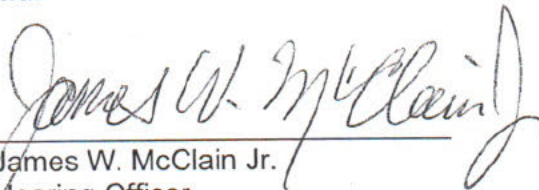
It is found that the claimant failed to prove by a preponderance of the evidence that she was not paid gratuities in violation of RSA 279:26-B.

DECISION

Based on the testimony and evidence presented and as RSA 279:26-B requires that tip sharing be voluntary and uncoerced, this Department finds that the claimant failed to prove by a preponderance of the evidence that she was not paid her full wages in violation of New Hampshire law.

It is ruled that the Wage Claim is **invalid**.

April 28, 2023
Date of Decision


James W. McClain Jr.
Hearing Officer

Original: Claimant
cc: Employer

JWM/nd