

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ABILIS SOLUTIONS CORPORATION

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation time
RSA 275:44 IV liquidated damages

Employer: **Abilis Solutions Corp, 245 Commercial St. #303 Portland ME 04101**

Date of Hearing: November 3, 2014

Case No. 48703

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 20, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on October 15, 2014.

The claimant testified that he did not receive his final payout of wages until beyond the 72 hours described in the law. The claimant said that he worked for the company for nine and a half years and he resigned his position on July 21, 2014. On August 5, 2014 it was the end of his final pay period. The employer did not direct deposit his final wages. The claimant testified that he asked them to do so because he was working in the Washington D.C. area at that time.

The claimant did not receive his final payout until August 22, 2014. This happened only because the claimant worked out a deal with the employer so that he would not have to pick up his final check in Maine.

The claimant also said that his final paycheck showed that he was due 5 hours of vacation time. This amount was above the total that he had already been paid.

The claimant also stated that the employer took wages away from him to cover a bill for cell phone use that they felt was not for company business. The employer said that there was

no record of the claimant being in Canada and using the phone but because of their policy they said they would go half with the claimant and they deducted \$504.81 from his wages.

The employer testified that the company had a policy that the last check had to be picked up by the employee leaving the company. In this case they were not going to make an exception but they did try to work out a mutually convenient place to hand over the check. The claimant was notified that the check was ready and it was only after several attempts to get the wages that it was agreed to send the check to the claimant residence and leave it at a designated place on the property. This was finally done and the claimant received his check.

The Employer also testified that the extra charges were on the claimant's tablet and not the cell phone. They said the charges occurred on a Friday and Saturday and on several days while the claimant was on vacation. The employer said that it was standard policy to pay usual charges but this bill stuck out because of the amount. They did agree to go half with the claimant. At the hearing the employer said that they did receive a charge back from the provider and that were willing to give the claimant one half of the charge back (\$250.00).

On the issue of the five hours of vacation time noted in the last pay roll check; the employer said that this was in error because of a false calculation by the payroll company. All vacation time had been paid in accordance with the company policies.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay all wages when the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as vacation time into the category of wages when the time is due and owing.

RSA 275:44 IV The commissioner may, upon written petition showing good and sufficient reason, permit payment of wages less frequently than weekly, except that it shall be at least once each calendar month. In all instances, payment shall be made regularly on a predestinated date. The commissioner may prescribe the terms and conditions of such permission, and limit the duration thereof.

This section of the law allows for a claimant to seek liquidated damages up to the amount of the Wage Claim when the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony provided for the hearing, that the Wage Claim is valid in part and invalid in part.

The employer provided credible testimony about the extra five hours on the last pay check. There was a change in payroll companies and the new company gave the claimant credit for being with the employer for eleven years. This improperly pushed the claimant into a higher leave earning formula. The claim for the additional five hours is invalid.

The claimant prevails in the claim that there was an illegal deduction made from his wages. This deduction was done to offset a series of charges for the use of a tablet in Canada. The employer testified that it was standard practice to pay the bills and to not charge the employee. In this case it was that the amount stood out and the employer challenged it. The employer did not show any signed record from the claimant that would allow for an unauthorized deduction to be made from his wages. The amount of \$504.81 is due to the claimant.

The Hearing Officer does not find that the employer was willful and did not have good cause for not directing the final payment to be direct deposited to the claimant's account. The employer was credible in their testimony that it had always been company practice to pay the final payout directly to the employee. In this case the employer said that the check was available and there was even an effort to meet at some point halfway from the company location to the claimant's residence. This could not be worked out and so the company made a change, for this employee, to have the check sent directly to his house and to have another company deliver it.

There is no finding for liquidated damages in this Wage Claim.

DECISION AND ORDER

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

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 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any vacation pay, it is hereby ruled that the Wage Claim for unpaid vacation pay is invalid.

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Hearing Officer finds that the claimant proved that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$504.81.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$504.81 within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 1, 2014

TFH/slh