

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ED REILLY SUBARU INC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid commissions/wages

Employer: Ed Reilly Subaru Inc., 150 Manchester St., Concord, NH 03301

Date of Hearing: December 18, 2013

Case No. 46856

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 16, 2013. 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 November 15, 2013.

The claimant testified that he worked for the employer since November of 2012. He stated that there was an employee handbook in place and he received it after he started to work. He said there was no written pay plan but his wage structure was for \$800.00 per week and .8% of sold parts. The claimant maintains that the percentage of sold parts was not considered a commission or a bonus, it was part of wages.

The claimant gave his notice to the employer and he feels that he is due a proration of the sold parts for the time of the pay structure that he worked prior to giving his notice. He said that he was told he forfeited the wages because the employer called it a commission and he was not employed on the scheduled dates for payment. The claimant stated that he is owed \$1,100.00.

The employer testified that the claimant was hired on a wage plan that included a weekly salary and a percentage of parts sales, paid once a month. The employer considers anything above a set salary to be a commission.

The employer said that in the employee handbook the policy was written and clear. This policy was also known to the claimant. The commission is paid on the Friday following the 10th

of the next month. The employee must be employed on the day of the commission payment . If the employee terminates at any time, voluntarily or involuntarily, prior to the commission pay date, the commission is forfeited.

The claimant gave his employment notice on August 20, 2013 and when he heard of the policy and that there was no proration, the claimant left on August 21, 2013.

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.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This section of the law mandates an employer to pay an employee all wages due at the time the wages are due and owing. Commissions are considered wages when the commission is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

There were written rules and policies in place and these were known to the claimant. He worked under these regulations for nine months. The claimant did not meet the designated date of the first Friday after the tenth of the next month. The commission established in the wage plan would have been paid on September 13, 2013. The claimant gave his notice on August 20, 2013 and walked away from the job on August 21, 2013.

There was a provision for management to waive the hard and fast date, however this was not done.

The employer provided credible testimony that the policy was in place and known to the claimant. The claimant had worked under the policy for nine months. The claimant did not meet the criteria set by the written policy.

The Wage Claim is invalid.

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 this Department finds the claimant failed to

prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 7, 2014

Original: Claimant
cc: Employer

TFH/all