

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

American Road Group LLC dba Laconia Harley Davidson

DECISION OF THE HEARING OFFICER

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

Employer: Laconia Harley Davidson, 239 DW Hwy, Meredith, NH 03253

Date of Hearing: January 23, 2014

Case No.: 46912

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$3,000-\$5,000 in unpaid commissions for August and \$12,000-\$16,000 in unpaid commissions for June. He did not specify for which year the commissions were due.

At the hearing, the claimant clarified the amounts claimed were for 2013 and amended the claim to the August commissions only.

He argued he received a notice from the employer, previously submitted, that he was to receive commissions through the end of August 2013. At the end of the hearing, the claimant stated that if the employer says he was paid all commissions due he will have to accept that.

The employer denies the claimant is due any further commission. They argue they provided the claimant a notice of the payments and commissions he was to receive after his separation from the employer.

FINDINGS OF FACT

The claimant resigned from the employer with a final day of work of August 17, 2013. The employer provided the claimant with a statement of the final payments and eligibility for commissions and their payouts.

The statement, signed by the claimant, reads as follows:

“Payment will be as follows:

1. Kenny will continue to get paid as normal through 8/31/2013
2. All commissions for bikes sold at the normal rate including both the percentage of gross margin and the per unit commissions
3. The Volume, Chrome, and CSI bonuses will be paid on a prorated basis should the be reached for the month
4. If we reach a combined gross margin of \$110,800 by the end of business on the 17th Kenny will receive another \$5,000.00 bonus”

The claimant received his full salary through August 31, 2013 as stated in #1.

The claimant received commissions for all bikes sold at the normal rate including both the percentage of gross margin and the per unit commissions through August 17, 2013, his last day of work, pursuant to #2.

The employer did not reach the goals for The Volume, Chrome, and CSI bonuses therefore no bonus was paid to the claimant, #3.

The employer did reach a combined gross margin of \$110,800 by the end of business on the 17th and the claimant did receive the \$5,000.00 bonus, as stated in #4.

The claimant argues that #1 of the agreement stating he will be paid as normal through August 31, 2013, means that he should have received commissions on all bikes sold at the dealership through August 31, 2013.

The employer argues #1 refers to his salary only, which both parties agree was paid in full through August 31, 2013. The claimant was paid his commission for all sales made through his final day of employment, August 17, 2013. The employer credibly testified he reviewed this document extensively with the claimant prior to his signing the document. #1 of the agreement does not refer to commissions and the claimant understood this at the meeting.

The Hearing Officer finds the plain reading of the agreement would indicate #1 was in reference to his regular wages, whether it might have been an hourly wage or a salary. Commissions are spelled out in section #2 through #4. Further, the employer's credible testimony that he had reviewed this document with the claimant and that he had understood that he would only be paid commissions through his last day of employment, is persuasive. Finally, the claimant does not have an expectation of receiving commissions generated after he has separated employment.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence his is due the claimed commissions/wages.

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 that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed commissions/wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: February 4, 2014

Original: Claimant
cc: employer

MJD/all