

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SEPTIC MANAGER

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Septic Manager, 841 Centre Street, PO Box 1, Sullivan NH 03445

Date of Hearing: February 11, 2014

Case No. 47118

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 5, 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 January 10, 2014.

The hearing started with the claimant asking that he amend the Wage Claim to include liquidated damages. The employer objected to this addition and the Hearing Officer ruled to not include liquidated damages as an issue.

The claimant testified that he worked for the company for about eight years. This Wage Claim only goes back three years. The claimant stated that he was a salaried employee and during the course of the work year, his time was cut back. This was during the winter months when work was slow in the industry. The claimant said that he often discussed this practice with the employer. He feels that because he is a salaried employee he should get his full pay for working the entire year. The claimant said that there was a different work schedule during the winter months but he continued in his full time position and although he was told that his wages would be reduced, he never received any written notice about the reduction.

The claimant also stated that he was on the job 24/7 to answer after hour calls. In addition to the on-call time, the claimant said that he was due a \$20.00 phone reimbursement for seven months. And that a uniform allowance was deducted from his last pay in the amount of \$115.00.

The claimant is also seeking reimbursement of the cost of his CDL license. The claimant said that \$232.73 was deducted from his wages for the cost of this certification. The employer required this license.

The employer testified that there are no wages due and owing. Every winter they met with the employees to plan for the lower volume of work during the winter months. The employees had the opportunity to continue at a lower wage rate or be laid off and go on the unemployment scale. The claimant always took the reduced pay, as did the other salaried employee, because the reduced rate was higher than the unemployment rate.

The last winter worked, the claimant asked to be laid off and it was later discovered that he was opening his own company in competition to this employer. The employer maintains that the reduction in wages was well known to the claimant and he participated in the process.

The employer also testified that the 24/7 policy was set up to cover calls for assistance. There was an amount paid to the employee if the employee answered the call. The employer said that there was no obligation on the employee. The employee could say no to the call and it went to the next person in line. There was no discipline for not answering a call or rejecting a call.

The employer did say that there was a telephone reimbursement for those employees who had their own phones. The employer did admit that they were not up to date on this benefit.

The employer said that the process for attaining the CDL license was paid for in advance by the employer. The employer deducted the amount paid from the claimant because he left the employ of the company and the license was issued to the claimant for a period of one year.

The employer has asked for the return of issued uniforms. These uniforms are issued through the company and have not been returned.

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 is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43-b: Payment of Salaried Employees. –I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

- (a) Any pay period in which such employee performs no work.
- (b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.
- (c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.
- (d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.
- (e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This part of the law deals with a salary wage package. It spells out when the package can be changed and how a pay period is set up and when it can be changed.

It is the finding of the Hearing Officer, based on the written presentations and the testimony provided for the hearing, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and he did meet part of this burden.

The claimant is seeking \$140.00 in unpaid telephone expenses. The employer testified that they did lose track of this benefit provision. This part of the Wage Claim is for seven months at \$20.00 per month. The claimant is due \$140.00.

The claimant is asked to return any uniforms in his possession and if there has been a deduction made, that money is to be returned to the claimant.

The remainder of the Wage Claim is invalid. The claimant knew about the wage changes because of market conditions. This practice was presented to the claimant, with options, and he selected his method of payment. It was done for at least two years and it was known to the claimant.

There is no finding for the 24/7 policy. This was set up to provide additional wages to the employee. The employee was under no obligation to accept an after hours call. The employee could just have it passed on to another employee.

The financing of the CDL license was a practice of the employer and it appears that they got their investment back either by paying the employer back or working for the employer. In this case the claimant got the license and left the company. The license is issued in the claimant's name and it goes with him to any new business.

The Wage Claim is valid in the amount of \$140.00 and the amount withheld waiting for the uniform(s) return.

The rest of the Wage Claim is invalid.

DECISION AND ORDER

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 \$140.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$140.00, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 12, 2014

Original: Claimant
cc: Employer