

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

NORTHERN EUROPEAN AUTOMOTIVE

DECISION OF THE HEARING OFFICER

Appearances: Nicole R. Fortune, Esq., Attorney for the Claimant

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

Employer: Northern European Automotive, 14 Chenell Drive, Concord, NH 03301

Date of Hearing: February 13, 2014

Case No. 47123

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 6, 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 claimant testified that he is due a total of \$76,657.52 for the Wage Claim. He stated that he is due \$19,653.99 in wages and \$57,003.53 in employee expenses. The claimant said that he was asked to invest in the company when he was a customer of the company. He was extended an employment contract in October of 2012 and it started on January 1, 2013. He became the General Manager of the dealership. The claimant's contract was for \$70,000.00 per year and he was not paid for the \$19,653.99 that is part of the Wage Claim. The claimant testified that he was not paid for certain pay periods and that became an accrued liability to the company because he was an employee.

The claimant stated that he was terminated as of December 2, 2013. All of his expenses were submitted as of December 31, 2013. The claimant testified that he assumed these expenses in an effort to grow the company.

The employer testified that the claimant did have an employment contract and there were pay periods that was not paid because the claimant asked not to be paid so that the cash on hand would be greater. The claimant, as an owner, had the right and the power to do this. The claimant was able to judge the financial situation in the company.

The claimant put money into the company. The expenses he is submitting was money he put forward in his ownership role. Employees are not asked to put in \$45,000.00 plus, in order to move the company forward. The claimant also had a corporate charge card to use for expenses and yet he states that he was loaning the company cash for necessary money to fund supplies and other things.

The claimant always put money into the company without any "note payable" as an owner of the company. There was no time set as to when the loans had to be paid.

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 spells out the governing rules and regulations of a salaried employee as opposed to an hourly employee.

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 and issue such as severance into the category of wages when the severance 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 valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and he met part of this burden.

It was clear to the Hearing Officer that the claimant filled the role as an employee. He worked for the wages and he cannot waive a requirement of the law. The claimant (employee) can work for a set wage plan as long as the wages are equal or above minimum wage. The claimant could not waive his wages so they have to be paid.

It was also clear that the claimant was an owner of the company. The expenses being sought are beyond the expenses paid under the assigned charge card. These bills were paid and the \$57,003.53 was suffered on behalf of a company in which the claimant had an ownership share. These expenses are not recoverable in the Wage Claim process.

The employer was credible in their testimony on the wages and on the expenses. The claimant can't waive his right to be paid for performing a work function for the employer. Wages have to be paid. This part of the Wage Claim is valid in the amount of \$19,653.99.

The employer was also credible in the issue of expenses. The claimant had a charge card and was paid for operating expenses. The expenses submitted almost a month after separation from employment, were those expenses of an owner. These expenses are outside of the Wage Claim process.

The Wage Claim is valid in the amount of \$19,653.99.

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 by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$19,653.99.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$19,653.99, less any applicable taxes, within 20 days of the date of this Order.

All other claims in the Wage Claim are invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 18, 2014

Original: Claimant
cc: Employer

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