

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

STEPPING STONE MUSIC OPPORTUNITIES

DECISION OF THE HEARING OFFICER

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

Employer: Stepping Stone Music Opportunities, 148 Plaistow Road, Plaistow, NH
03865

Date of Hearing: March 13, 2014 and May 14, 2014

Case No. 47179

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 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 February 19, 2014. The hearing was held over two days, March 13, 2014 and May 14, 2014.

At the start of the hearing on May 14, 2014 the claimant withdrew any request for commissions from the employer.

The claimant provided testimony that he was hired at a weekly salary of \$600.00 and a commission of 25% of net profits. He also agreed to his weekly salary being reduced so that the person formerly holding his position would be receiving unemployment benefits. The claimant also said that he was not paid for a training period. The claimant also stated that one week he did not get paid and the employer used the unpaid wages to offset the cost of concession stand goods.

The employer testified that the claimant had suggested changes in his wage structure to offset the unemployment being paid to a former employee. The employer also said that a week's pay was held back at the request of the claimant and they did use the money saved for concession price reduction.

The employer testified that there was no training period and no wages withheld. The employer said that the wage structure was discussed and developed with the claimant's input. The tenure of the claimant's employ was one of chaos and lost revenues. It was not a good relationship for either party.

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. Commissions are considered wages when due.

It is the finding of the Hearing Officer, based on the submissions and the testimony provided by the parties, is that there is a valid Wage Claim. The testimony showed that there was not a great deal of record keeping and that the parties did not have a good working relationship. It is hard to figure out when the claimant worked and when there was a set wage plan. It seems that the claimant had some input into his salary structure and the working conditions.

It also appears that there was not a great deal of oversight by the employer.

It is the finding of the Hearing Officer that the claimant is due \$600.00 for the week the wages were withheld and the funds allocated to the concession goods. An employee cannot agree to working for no wages so that the wages can be directed to a benefit to the employer.

There is no finding about a training period because there is no evidence that a training period happened. The claimant also withdrew his request for commissions.

The Wage Claim is valid in the amount of \$600.00.

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 \$600.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$600.00, less any applicable taxes, within 20 days of the date of this Order.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 11, 2014

Original: Claimant
cc: Employer

TFH/clc