

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SANTANDER BANK

DECISION OF THE HEARING OFFICER

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

Employer: Santander Bank, 296 Essex Street, Lawrence, MA 01840

Date of Hearing: March 17, 2014

Case No. 47283

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on January 8, 2014. 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 claimant testified that she worked for the employer for two years and was an hourly employee. The employer had a quarterly bonus program and she feels that she is owed for the third quarter bonus. The time period for this bonus was from July 1, 2013 until September 30, 2014. The claimant said that there were goals set and once attained the employee was eligible for the bonus. In this case she attained 103% of the goal(s) and believes she is owed \$2,540.00.

The claimant was terminated from employment on November 13, 2013 after the earning of the bonus. She does not feel that the employer's inability to get the bonus out on time should keep her from the bonus payment.

The employer testified that the bonus plan is in place and it is on line so any employee can review the plan. The bonus is not part of the employee handbook and so it is not part of the wage plan. The plan is a prerogative of management and can be altered or discontinued at any time. The plan/bonus can be paid out at any time.

In this case the plan/bonus was paid out on November 29, 2013 while the claimant was terminated on November 13, 2013. It is clear that the employee must be an employee on the date that the bonus is paid. This did not happen in this case. This has also been a practice of the company and it has never been paid to a non-active employee.

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. A bonus plan is also considered wages when the plan 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 she did not meet this burden. The claimant is seeking a bonus that is not a part of a wage plan. It is an incentive that the employer uses to enhance work production.

The employer was credible in that the bonus plan was completely a management prerogative and could be changed or discontinued at any time. The employer was also credible in their testimony that the employee had to be an active employee at the time of the payout and that it has never been a past practice to pay anyone who was not employed at the time of payout.

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 Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: April 4, 2014

Original: Claimant
cc: Employer

TFH/cag