

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

CHARLES GEORGE COMPANIES INC.

DECISION OF THE HEARING OFFICER

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

Employer: Charles George Companies Inc., PO Box 857, Londonderry, NH 03053

Date of Hearing: March 13, 2014

Case No. 47330

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on January 15, 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 he worked for the employer in an hourly position and there was an employee handbook in place. The claimant did say that the commission process was not part of the handbook and was not contained in any hiring agreement.

The claimant said that he left full time employment and was just to work on weekends. He was told that he would receive his third quarter bonus and that the fourth quarter bonus would be prorated. The claimant said that his third quarter bonus was \$345.00 and the estimated fourth quarter bonus was \$256.13.

The employer testified that the bonus program started in 2004. It was modified in 2007 and that management retained the right change or stop the program. It has been the practice that an employee had to be in a full time position when the bonus was paid. The employer said that they have held monthly meetings where the bonus plan was discussed. In this case the employer intended to pay the claimant once the third quarter was determined. They were going to do this even though the claimant was no longer a full time employee.

The employer said that they have never paid out a bonus to a person who was no longer an employee. They were going to do it in this case but the claimant refused to work in his part time (weekend) position. Wages are set in writing and they have all been paid. The bonus plan is a management prerogative.

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 when the wages are due and owing.

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This is where an issue such as a bonus plan becomes a wage issue when the bonus 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 he did not meet this burden.

The claimant was aware that the bonus plan was outside of the normal wage structure. He may have been told that he would get the bonus for working weekends. However he was not employed, even as a part-time employee when the third quarter bonus was issued.

The employer was credible in testifying that the bonus was a management prerogative and could be changed, altered or stopped at any time. It was not a wage plan component. The employer was also credible in that the bonus plan had never been paid to someone who was not on the payroll at the time the bonus was paid.

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 he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 28, 2014

Original: Claimant
cc: Employer

TFH/cag