

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


V

G F DISTRIBUTORS

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses

Employer: G F Distributors, 34 Linnell Circle, Billerica, MA 01821

Date of Hearing: April 16, 2014 and May 28, 2014 (open until June 6, 2014)

Case No. 47374

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on January 17, 2014. The notice was sent to the employer. The claimant amended the Wage Claim and the employer submitted an objection to both parts of the Wage Claim. 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 April 2, 2014. The hearing was held over two separate days and the parties were given until June 6, 2014 to submit written summations.

The Wage Claim was filed for \$2,190.00 and was amended for another \$602.39. The claimant testified that she was hired in July of 2012. Her written hiring agreement called for \$1,400.00 per pay period, one period was paid on the first of each month and the other period on the fifteenth of each month.

The claimant said that when she started her employment, she was assigned a territory that had not been serviced in some time. She was led to believe that it was a vibrant location and with her ability and background she would be able to attain sizable wages. Once she started to work the territory she realized that it would be an uphill project. She was put on the wage plan with a six month time plan.

At the end of the six months the claimant met with management and she continued on the plan. Nothing changed until January of 2014. It was at a meeting that the employer

announced that everything would be commission based and there was no more set monthly wages. The claimant resigned her position with the company.

The claimant testified that she was docked wages when she took a day off or worked from home. She was also docked for working from home on snow days. She testified that she was docked \$1,820.00 for these days.

The claimant also said that she was due expenses for gasoline allotments and for bank fees for checks not accepted by the bank.

The employer said that the claimant was hired based on her experience and ability to produce in the industry. The initial employment agreement was for a twice a month set wage and it was to be for a six month limit. The employer did say that after several meetings with the claimant they continued the original pay plan.

The employer maintains that the original hiring agreement was not a salary based plan but a draw against commissions. The employer said that they realized it was difficult in "growing" the territory and so they continued the wage structure. This wage plan was in place until January of 2014 when the employer held a meeting with all employees and announced a new wage plan based entirely on commissions. The claimant did not object to the new plan but after a few days, she submitted her resignation.

The employer stated that the basis of the old wage plan was to do direct sales. It was the practice of the employer that if the claimant missed work, for any reason, she was docked a days pay. The employer said that there were no provisions to work from home and the purpose of the claimant's position was to go into client establishments and sell products. This is why any none sales days when there was no direct contact with a client were deducted from the commission draw plan.

The employer also maintains that all expenses have been 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 pay an employee all wages due at the time the wages are due and owing.

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 an issue such as employee expenses into the category of wages when the expenses are 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. It is the burden of the claimant to show that there are wages due and owing and she met part of this burden.

It is found that the wage plan, under which the claimant was hired, was a salary plan. The claimant received the same amount of wages twice a month. The original hiring agreement said that it was to continue for a period of six months. The employer and the claimant agreed to extensions of this plan until January of 2014.

The law states that an employee must be compensated for working during a pay period. In the case of a salaried employee, it is based on the "many or the few" hours worked in a pay period.

The claimant testified that she was docked pay for any days she did not work in the field. The employer said that this was their practice. It is the finding of the Hearing Officer that the claimant was docked \$1,820.00 for days out of work. There is no evidence that any of the time off was an entire pay period.

The issues of extra pay and expenses are not valid. The claimant did not bear her burden to show that there were extra wages and expenses due. The employer was credible in their testimony that all wages and expenses were paid.

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 she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,820.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,820.00, less any applicable taxes, within 20 days of the date of this Order.

All other parts of the Wage Claim are invalid.

/s/

Thomas F. Hardiman

Hearing Officer

Date of Decision: July 2, 2014

Original: Claimant
cc: Employer
TFH/clc