

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

SERVICE CREDIT UNION

DECISION OF THE HEARING OFFICER

Appearances: Jason M. Craven Esq., Attorney for the Employer

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

Employer: Service Credit Union, 2032 Lafayette Road, Portsmouth, NH 03801

Date of Hearing: April 21, 2014

Case No. 47573

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on February 18, 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 March 25, 2014.

The claimant testified that she is seeking the payment of a bonus for the year of 2013. The claimant worked that year and was terminated on January 24, 2014. The bonus was paid after the claimant's termination but she feels it is due because the bonus year was over prior to her termination. She worked for the employer for about five and a half years and there was always a bonus plan in place. It paid around 8.8% of your gross annual income. The claimant feels that she is due \$2,325.57.

The claimant stated that she worked under an employee handbook but she did not realize the bonus plan structure was contained in the employee handbook.

In this case, the employer presented an Offer of Proof that the plan was in place since the year 2003. In this case the bonus was paid on February 7, 2014. The handbook is clear that an employee has to be on pay status as of the day of the payment.

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.

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 a bonus plan into the category of wages when the bonus is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the claimant, 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 testified that she was aware of the employee handbook but not aware of the section on the bonus plan. It is clear that the plan is paid only if the employee is still in pay status. In this case the bonus was paid on February 7, 2014 and the claimant was terminated on January 24, 2014.

The employer prevails in the Wage Claim with the Offer of Proof.

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: May 5, 2014

Original: Claimant
cc: Employer

TFH/clc