

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


V

WEBTRONYX, LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid commissions
RSA 275:43 I unpaid wages
RSA 275:43 V unpaid earned time (PTO and Vacation)

Employer: Webtronyx, LLC, 64 Oak Hill Road, Northfield, NH 03276

Date of Hearing: May 29, 2014

Case No. 47798

BACKGROUND AND STATEMENT OF THE ISSUES

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

The claimant testified that he worked as a salaried employee from November 21, 2013 until March 7, 2014. He was also to receive commissions on work done and paid. The claimant also had a mileage benefit that dictated so many miles per month before a reimbursement started.

The employment agreement stated that an employee can be terminated at any time, by the employer, but had to give a 30 day notice if leaving the job voluntarily.

The claimant also said that he received a copy of the Employee Handbook on March 2, 2014 after questioning some of the wage structure. The claimant said that he was terminated shortly after that in a meeting with the employer.

The employer said that there were problems with the claimant's work and complaints from customers and so he was terminated. At the start of the employment arrangement the claimant was hired as an exempt salaried employee. The employer felt that if any of the issues of employment were not clear, the claimant should have come forward with the questions.

The employer also stated that the claimant was not entitled to vacation time because he had not worked for a full year. The employer also said that Paid Time Off (PTO) does not apply

to the claimant. The employer also said that the hours listed were not all subject to commissions under the company rules. The few that were considered commissionable were 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 to pay an employee all wages due at the time the wages are due and owing.

Commissions are part of wages when they 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.

An issue such as accrued time or given time is considered wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written presentations and the testimony provided for the hearing, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant was credible in his testimony about the hiring process and the working rules and regulations. The claimant was hired as an exempt salaried employee with understanding there would be commissions to go with the salary. At the hearing, the claimant provided a listing of work performed and of mileage driven for the listing of jobs.

The claimant was also credible in his testimony about vacation time versus Paid Time Off (PTO). It was clear that he was not entitled to vacation time for working less than a calendar year. The claimant said that he was looking for his unused PTO or ten days.

The employer stated that the claimant did not work on assignments that generated commissions in many cases. The claimant should have been aware of the rules and regulation and yet never questioned the payment schedule. The employer also said that the mileage issue was clear and that there had to be so many miles driven before the company paid for mileage.

The employer stated that the issue of vacation time was moot because of the term of work before it became a benefit. The claimant did not work a year. The issue of PTO did not apply to the claimant.

The Hearing Officer finds that the employer has the burden to keep and provide records. In this case this was not done. The employer responded to the records provided by the claimant only. The issue of annual leave versus PTO is also in the favor of the claimant, the written handbook clearly stated that the PTO is an employee benefit and it will be paid out, if unused, upon separation of employment. The claimant testified credibly that he never used any of the allotted time and so it was due to him. The claimant knew he was not eligible under the vacation time provision.

The employer did not provide any mileage records or commission records except for two projects. It seems that a verbal rejection of the claimant's facts and figures does not provide this decision maker with credible evidence that the commissions and mileage were not valid.

The Wage Claim is valid in the claimed amount of \$4,781.25.

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 by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$4,781.25.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$4,781.25, less any applicable taxes, within 20 days of the date of this Order.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 30, 2014

Original: Claimant
cc: Employer
TFH/clc