

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

GEORGIA-PACIFIC GYPSUM LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Georgia-Pacific Gypsum LLC, 170 Shattuck Way, Newington, NH 03801

Date of Hearing: June 12, 2014

Case No. 47864

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on March 26, 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 May 7, 2014. The Wage Claim is for \$1,346.16 in unpaid salary.

The claimant testified that on his last day of work he was told by his supervisor that his position was being eliminated. The supervisor wanted to talk to the claimant about another position that was available. The new position would require the claimant to travel and he told the company that this did not fit into his lifestyle. The claimant did say that he would continue to work at a position in Newington, New Hampshire. That position was vacant and in the process of being filled.

The claimant was told that the vacant position was already promised to another applicant. The claimant turned in the company equipment that was in his possession and left the job. The claimant said that he did not want to work out of the area because he owned some multi-family apartments in a nearby town.

The employer testified that the company wanted to keep the claimant as an employee. They tried to get the claimant to stay but he just left on his own. The claimant did not return to work and was considered separated from service.

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 all wages when the wages are due and owing.

RSA 275:43-b: Payment of Salaried Employees. –I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

- (a) Any pay period in which such employee performs no work.
- (b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.
- (c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.
- (d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.
- (e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This part of the law explains the regulation of paying a salaried employee.

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 law allows for a salary to be stopped when an employee leaves employment voluntarily and before the end of the pay period. This is what happened in this case. The employer offered the claimant a position to continue with the employer. The claimant rejected the offer and left the company.

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.

/S/

Thomas F. Hardiman
Hearing Officer

Date of Decision: July 8, 2014

Original: Claimant
cc: Employer
Employer Attorney

TFH/cag