

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

  
**V**

**VTEC OF NEW HAMPSHIRE INC.**

**DECISION OF THE HEARING OFFICER**

**Appearances:** Jason M. Cravin Esq., Attorney for the Claimant  
Jay P. Sheehan Esq., Attorney for the Employer

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

**Employer:** Vtec Of New Hampshire Inc.

**Date of Hearing:** July 23, 2014

**Case No. 47867**

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on March 28, 2014. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on June 26, 2014. The employer was represented at the hearing. Both parties presented an Offer Of Proof as their case presentation. There was also a wage payment of \$1,000.00 made to the claimant and so the Wage Claim was reduced to \$21,153.86.

The claimant's position was that he started to work for the employer in July of 2011. There was a hiring agreement in place and it was signed by both parties. The claimant started to work for the company on July 16, 2011 at a yearly salary of \$80,000.00. The Federal W-2 Tax Form for 2013 was presented and it showed a yearly salary of \$57,846.14. The claimant maintains that he was not paid \$22,153.86 for that year. He was later paid \$1,000.00 in 2014. The claimant was terminated from his position, without cause, in December of 2013.

The employer showed that they ceased business in August of 2013. They made every effort to keep the claimant on the payroll until he was released in December of 2013. The employer said that they were not in compliance with the signed contract. It was also stated that the business was not bankrupt.

### **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.

It is the finding of the Hearing Officer, based on the claimant's and the employer's Offer of Proof, 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 employer stated that the company stopped doing business in August of 2013. However they tried to keep the claimant employed until December of that year. The claimant was not terminated until December and the termination was without cause.

The claimant was credible in presenting a statement of wages paid, and a signed contract that he worked under until his termination.

The Wage Claim is valid in the amount of \$21,153.86.

### **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 \$21,153.86.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$21,153.86, less any applicable taxes, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: August 14, 2014

Original: Alfred J. Lambert  
cc: Vtec Of New Hampshire Inc.  
Jay Sheehan, Esq.  
Jason M. Craven, Esq.

TFH/klt