

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Calef Highway Auto Inc.

DECISION OF THE HEARING OFFICER

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

Employer: Calef Highway Auto Inc., 6 Colonial Way, Suite 1, Barrington, NH 03825

Date of Hearing: July 9, 2014

Case No.: 48038

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$300.00 in unpaid salary for his last week of work and \$750 for additional work he performed on cars. He argues the employer only paid him for two hours during his last week of work instead of his regular salary. He left work on Monday, April 21, 2014, to go to the hospital and did not return until Thursday, April 24, 2014, with a doctor's note.

He further argues he performed work on a number of cars and was told he "would be taken care of." He argues he was a salesman, not a mechanic, and should be compensated separately for these services.

The employer argues the claimant had a history of not appearing for his full forty hour work week. He testified the claimant appeared for work on Saturday, April 19, 2014, and worked for only three hours. The claimant brought the doctor's note to work later that week and the employer terminated his employment.

The claimant was paid \$22.50 for three hours of work on Saturday, April 19, 2014. The employer does not feel the claimant is due his full salary for only working three hours.

FINDINGS OF FACT

The claimant began working for the employer full time on March 15, 2014. He was hired at a rate of \$300.00 weekly salary and 20% of the profit of all cars he sold. The pay period is Saturday to Friday, with pay day on the last Friday of the pay period.

The employer provided credible testimony that the claimant worked for three hours on Saturday, April 19, 2014. He did not return for the rest of the pay week. He was paid \$22.50 for this week.

The claimant argued he was a salaried employee and is due his full salary because he worked during that pay week.

The employer's argument that the claimant does not deserve to be paid his full salary for only working three hours in the pay period is not persuasive under RSA 275:43-b.

RSA 275:43-b requires that an employer pay a salaried employee their full salary for any pay period in which the employee performs any work. It also allows employers to make deductions to a salaried employee's wages under certain circumstances, but none of those exceptions apply to the facts of this case.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence that he is due the claimed salary. The employer is given credit for the payment of \$22.50 he paid the claimant, leaving a balance of \$277.50.

The claimant argued he is due \$750.00 for additional mechanical work he performed during the course of his job. He argues he was a salesman, not a mechanic, and should be compensated separately from his regular pay. He argued the employer told him he "would be taken care of."

The employer argued the claimant was paid salary and commission. He would not pay any additional hourly rate for making a car look nice to sell.

The claimant's argument that he was told he would be taken care of is not persuasive. In his original claim form, he stated he was paid a salary and commission. He did not make any mention of a separate hourly rate for fixing cars. He only mentioned \$750.00 work performed on cars in the section of the form marked "amount". The claimant did not provide any substantive evidence he was due a separate hourly rate for work performed on cars, while he was being paid a salary.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages.

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 that the claimant proved by a preponderance of the evidence that he is owed the claimed salary/wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$277.50.

As RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$277.50, less any applicable taxes, within 20 days of the date of this Order.

/s/

Melissa J. Delorey
Hearing Officer

Date of Decision: July 18, 2014

Original: Claimant
cc: Employer

MJD/cag