

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

TRANSFORMER SERVICE INC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid commissions
RSA 275:42 I unpaid wages

Employer: Transformer Service Inc.

Date of Hearing: July 23, 2014

Case No. 48072

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on May 6, 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 June 26, 2014.

The claimant testified that she worked for the employer for thirty three years. She was paid hourly plus commissions. The Wage Claim is filed for the payment of commissions. She stated that there was no hiring agreement but there was an employee handbook in place.

The claimant stated that she received a document, upon separation, that said no commissions were paid once an employee left the job. In the past the commission was paid once the customer paid for the service. The claimant believes that at least on other employee was paid her commission once she left the company.

The employer testified that they paid the claimant \$246.52 after she left the job. The remainder of the Wage Claim was not paid because of a change in policy on December 1, 2000. At that time the policy was changed and the claimant was notified of the change during her performance evaluation. The commission is paid when the customer pays but there is no payout after an employee quits.

The employer presented several exhibits from a former administrator, a Mr. Boyle. These documents were signed by the administrator and the claimant. The employer did not

show a signed copy of the new payout system that would show the claimant was aware of the policy.

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.

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This part of the law includes commissions as wages when the commissions are due and owing.

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

The claimant was credible in her testimony that the change in the policy was not known to her. The exhibits show documents that were signed by the claimant and Mr. Boyle back in 2000. However, the change in the policy on commissions shows that Mr. Boyle signed the change but there is no document that shows the claimant also signed off as being aware of the policy change.

The employer did show that there was a payment of \$246.2 paid to the claimant. The Wage Claim is valid in the amount of \$2,649.06.

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 was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$2,649.06.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$2,649.06, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 20, 2014

Original: [REDACTED]
cc: Transformer Service Inc.

TFH/klt