

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



V

**MONRO MUFFLER BRAKE**

**DECISION OF THE HEARING OFFICER**

**Appearances:** Martha Van Oot Esq., Attorney for the Employer

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275: 43-b unpaid salary  
RSA 275:43 I unpaid bonus  
RSA 275: 43 V unpaid time off  
RSA 275:43 V unpaid bereavement pay

**Employer:** Monroe Muffler Brake, 200 Holleder Pkwy, Rochester, NY 14615

**Date of Hearing:** August 7, 2014 (written closings due on August 15, 2014)

**Case No.** 48132

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on May 20, 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 July 3, 2014.

The claimant testified that he worked for the employer for ten years. His pay plan contained a salary, commission and bonus pay structure. The pay plan was different for every manager. At the end of December 2013 the claimant said that his store was the top grossing store in the whole chain of stores. He said that although he was salaried he did work an average of 56 hours per week.

The claimant was suspended without pay on May 1, 2014. He testified that he was aware that salary could be prorated in the case of a disciplinary action. He also believes that the suspension was not disciplinary. He stated that he felt he was a part of a Reduction In Force (RIF). The claimant feels that he is due \$7,140.00 in unpaid wages and benefits.

The employer testified that the claimant was discharged from his position with the company for cause. The claimant was in a position as a supervisor and the company had received complaints from other employees working with the claimant. The employer said that the company imposed a suspension without pay to review the charges and then make a decision.

The employer stated that it was found that the claimant was working irregular hours and was falsifying records. The claimant also worked on a family member's vehicle without going through the proper administrative procedures. The employer stated that the claimant had been spoken to in the past to correct certain habits and the trend of bad practices continued.

At a point in time two employees, working for the claimant, signed a complaint about the attendance practices of the claimant. There was one day where the claimant did not come into work. The records of entrance into the building shows that someone came in late that evening and the claimant's time was changed from eight hours being off to only four hours. The records of entrance to the facility showed many late hours opening up the shop and closing at later hours.

The employer also said that during their investigation the claimant's mother died. He never asked for the appropriate leave until after he was terminated. The employer maintains that when an employee is out on suspension without pay, the employee cannot substitute other leave to off set the wages being withheld.

The claimant did not rebut many of the findings of the employer. The claimant also did not show that any bonus payments were made during the later part of his employment. The employer testified that an employee had to be on pay status when bonuses 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 section of the law mandates an employer to pay an employee all wages due at the time 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 spells out the times when an employee's salaried wages can be stopped in a pay period.

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 part of the law places an issue such as bonus pay into the category of wages when the bonus is 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.

This section of the law places an issue such as earned time into the category of wages when the time is due and owing.

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 employer testified credibly that they were presented with enough facts to conduct an investigation. The employer felt that it was necessary to suspend the claimant during this investigation. The employer had a difficult time trying to meet with the claimant during the suspension. Once they did meet, the claimant was terminated.

The claimant did not produce enough evidence to show that the discharge was not based on cause. The claimant seemed to hold to the salary theory that you were to be paid for the many or the few hours in a pay period. This did not prove to be a deciding factor because of the number of times the store was entered after store hours. The employer proved credible when they said the entries were problematic and the suspension pending investigation was a way to resolve the inquiries and the complaint from other employees.

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.

---

Thomas F. Hardiman  
Hearing Officer

Date of Decision: August 25, 2014

Original:   
cc: Monro Muffler Brake  
Martha Van Oot, Esquire  
TFH/klt