

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

HUAWEI ENTERPRISE

DECISION OF THE HEARING OFFICER

Appearances: Charles M. deChateauvieux Esq., Attorney for the Employer (telephonic)

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: Huawei Enterprise
5700 Tennyson Pkwy, Suite 600
Plano, TX 75024

Date of Hearing: August 13, 2014 (held open until August 25, 2014)

Case No. 48273

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on June 10, 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 10, 2014. The employer presented their case by telephone.

The Wage Claim was filed for \$82,978.00 in unpaid wages and liquidated damages for the same amount.

The claimant testified that he was hired by the employer in August of 2011 and resigned his employment in September of 2013. The claimant did have a hiring agreement that spelled out his benefits and his salary. The Wage Claim is not for the agreed upon salary but for a bonus plan that was in place or being developed.

The claimant testified credibly that the employer never brought out a definitive bonus plan with set formulas to the employees. The employees knew that they were working under some kind of plan but it was constantly evolving. The claimant felt that without set parameters

then a plan could not be instituted on a retroactive basis which he felt the employer was trying to do.

The claimant testified that he was planning on receiving a bonus of \$30,000.00 in 2011 and he only received \$11,000.00. In 2012 he felt that he would receive a bonus of \$80,000.00 and he only received \$16,022.00. The difference from what he felt he was due and what he was paid is the amount of the Wage Claim, \$82,978.00.

The claimant also feels that the employer did not have good cause and was willful in their actions to avoid the payout of the entire bonus program. This is the reason for the request for liquidated damages in the Wage Claim. The employer was constantly in a position where they could not answer the questions on the formula for determining the bonus plan.

The employer has taken the position that the claimant had a hiring agreement with a salary of \$120,000.00. The payment of this salary is not in question for this Wage Claim. The hiring agreement also spelled out the fringe benefits that the employee was eligible to receive if so desired. The claimant was paid a bonus in 2011 that was a prerogative of management. In 2012 the claimant was paid a bonus based on figures developed by the employer. The On Target Bonus Plan (OTB) was being developed by the employer in the year 2012. There was the possibility of achieving a bonus of \$80,000.00 if all criteria were met. The OTB was in a state of flux for the year but when developed the claimant did not come close to the \$80,000.00 bonus. The claimant was paid \$16,022.00 based on the OTB and several additions brought forward by the employer as a benefit to the claimant.

The employer believes that there are no wages due under the New Hampshire law. The claimant had a signed hiring agreement with the employer and was paid for all provisions of the signed agreement. The employer did have a system of bonus payments that were management prerogatives that could be paid or not paid. The claimant did receive a bonus in his first year of employment. The employer did undertake the process of developing a bonus plan but it was never complete for the year 2012 and was only implemented late in the year.

The employer maintains that the hiring agreement was paid for in full and that any bonus plan fell under a provision of the hiring agreement that said any amendments or modification, to the hiring agreement, had to be in writing and signed by a company officer. This was not done.

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.

RSA 275:44 IV reads: "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10% of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition."

This part of the law allows for a claimant to seek liquidated damages up to the amount of the Wage Claim if the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

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 claimant testified that he was paid in accordance with his hiring agreement but was never paid for any bonus plan that he felt was in place and was part of wages. The claimant also expressed frustration with the employer and the pace of establishing a bonus plan. However, the claimant did receive several bonus payments during his employment.

The employer testified credibly that all aspects of the hiring agreement were met during the claimant's employment. The employer did provide two bonus payments that were outside of the hiring agreement and a prerogative of management. As the OTB Plan was being developed the claimant was making assumptions as to the payment of the bonus plan. The claimant did receive a bonus payment based on the prerogative of the employer. The employer did state that the claimant did not meet any of the established criteria of the developing OTB Plan.

The employer was also credible in the meaning of the hiring agreement and any changes or modifications that were made to the agreement. There were no written and approved changes to the Wage Plan (Hiring Agreement).

There is no finding for liquidated damages.

The Wage Claim is invalid.

DECISION AND ORDER

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

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: September 18, 2014

Original: [REDACTED]
cc: Huawei Enterprise
Charles M. deChateauviex, Esquire

TFH/klt