

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ELLIOT HEALTH SYSTEMS – ELLIOT HOSPITAL

DECISION OF THE HEARING OFFICER

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

Employer: Elliot Health Systems 4 Elliot Way Manchester NH 03103

Date of Hearing: October 2, 2014

Case No. 48448

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 14, 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 September 9, 2014.

The claimant testified that she is seeking twenty-two hours of pay and twenty-two hours of shift differential. The total Wage Claim is for \$369.38. The claimant is also seeking liquidated damages for late payment of wages.

The claimant said that she worked for the employer for six years and was in an hourly, full time position. The claimant said that on May 2, 2014 she was asked to go to a meeting and she was suspended from her duties, pending an investigation. The claimant requested that her earned time be used while she was on suspension,

The employee handbook that was in place said that any earned time was paid out upon separation.

The employer testified that on May 2, 2014 the claimant was called into a meeting and was placed on suspension. This occurred after the claimant came to work but before her shift

started. The employer did pay the claimant for two hours during the hearing and the claimant accepted the payment.

The employer said that the policy was to not pay out leave while there was an investigation going on. The claimant was not allowed to use her accrued time while out and she was not entitled to shift differential because she did not work the required hours into a designated shift to trigger the payment of the differential.

The employer maintains that the claimant has been paid for the two hours on May 2, 2014 and that is all the wages due. When the suspension led to a discharge, the claimant was paid out all of her earned time in accordance with the rules.

The employer also stated that they were not willful and did have good cause for the timing of the last check. They tried to contact the claimant so she could pick up her check but were unable to do so. The check was finally mailed to the claimant.

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

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 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 percent 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 when there is a finding by the Hearing Officer 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 she did not meet this burden.

The employer was credible in testifying that earned time is not paid to offset a period of suspension. All of the time was paid upon separation of employment.

The employer also was credible in saying that shift differential is paid only after working so many hours into the shift. It is not paid out if there is no work performed on the shift.

There is also no finding for liquidated damages. The employer was not willful and did have good cause for a delay in the payment of the final wages.

The Wage Claim is invalid.

DECISION

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 she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 31, 2014

TFH/slh