

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ATG GROUP, INC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: ATG Group, Inc.
95 Hathaway St.
Providence, RD 02907

Date of Hearing: September 8, 2014

Case No. 48455

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 15, 2014. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on August 20, 2014. The employer did testify by telephone for the hearing.

The claimant testified that he worked for the company for about eighteen months. He was paid bi-weekly and his wage plan was for a salary plus commissions. His starting salary was for \$104,000.00. The claimant was also on a quarterly plan to review sales and commissions.

The claimant maintains that he was not paid for five pay periods because the employer was trying to have the claimant renegotiate his compensation plan. The Wage Claim is for \$9,223.00.

The employer testified that the claimant was never in a salaried position. The wages were based on sales with commissions on those sales. When the claimant started he asked for a \$140,000.00 with a set amount towards benefits. The employer and the claimant settled on the \$104,000.00 plus medical benefits. The quarters worked were four in 2013 and the claimant was extended for quarter one in 2014.

The claimant and the employer started to negotiate over the amount of the draw and the claimant was to forecast sales to justify the draw and therefore the commissions paid. The claimant sought \$1,800.00 in the draw and the parties settled on \$1,100.00 for the draw.

The employer said that the claimant was seeking other employment and was trying to cover himself with as much money as he could because he was not generating sales.

The claimant said that the sales were lacking because there was a defined learning curve and the product being sold was not consumer friendly.

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.

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 valid. The claimant has the burden to show that there were wages due and owing and he met this burden. He did not justify the amount of the Wage Claim but there are wages due and owing.

The claimant was working in a wage program that was to be a draw. There were forecasts developed and there was a formula that justified the draw against future sale earnings. In this case, it was clear that the employer and the claimant had agreed on a set draw and had changed that amount over the course of employment. It appears that the claimant asked for a set amount and the employer evaluated that amount against what it would take in sales to justify the draw.

Over the course of the claimant's employment the sales figures did not reach the forecasted amounts and so there were negotiations over the amount of the draw. The draw, although changed at times was consistent based on the parties agreeing each quarter over the amount.

The claimant submitted records that show where he felt there was no wages paid. A review of these records show that there were some deposits made and there were expenses to

be deposited. It is hard to tell how the claimant arrived at his total Wage Claim amount. However, there appears to be several pay periods where there was no direct deposit. On April 22, 2014 it appears that the claimant did not receive a deposit of \$1,582.00. The same amount is not deposited for May 6, 2014. On May 20, 2014 there is a missing direct deposit of \$1,000.00.

It is the finding of the Hearing Officer that the claimant provided credible proof and testimony that he was not paid the amount of \$4,164.00. The Wage Claim is valid in this amount and not in the original claim of \$9,223.00. The employer established a payment system which was not based on sales so they should not stop it without notice.

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 proved that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$4,164.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$4,164.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 1, 2014

TFH/klt