

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



**V**

**GLOBAL RELIEF TECHNOLOGIES, INC.**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:27 equal pay  
RSA 275:39 liquidated damages

**Employer:** Global Relief Technologies  
15 Rye St.  
Portsmouth, NH 03801

**Date of Hearing:** September 11, 2014

**Case No.48519**

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on July 16, 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 August 20, 2014. The claimant is seeking \$1,500.00 in a salary adjustment and \$1,500.00 in liquidated damages. The Wage Claim is for \$3,000.00.

The claimant stated that she was hired by the employer in November of 2012. On January 3, 2013 she became a full time employee. Her annual salary was \$71,999.98. On or about July of 2013 an employee, a male, was hired to do the same job as she was doing and at a higher salary.

The claimant felt that the new employee had less experience than she did. A complaint was made to Human Resources and there was no response. In February of 2014 the claimant was called to a meeting that she thought was going to be a performance review and she was informed that her position was being eliminated. She questioned the issues she raised about equal pay and was informed that it was no longer an issue.

The claimant testified that she did sign a separation agreement but she feels that it does not prohibit a Wage Claim. She believes that the equal pay law supersedes any written agreement.

The employer testified that they are a software and solution provider. Thirty percent of their employees are female and they are well aware of the law and want to follow it. They said that the position being held by the claimant was eliminated in May of 2013. A new position was extended to the claimant even though she lacked many of the requisites of the job.

The employer maintains that the other employees hired into the last position held by the claimant were much more qualified in the desired areas. This was a decision made by the employer.

When the claimant separated from employment she signed a separation agreement on February 12, 2014. Part of the agreement was a payout of two weeks wages or \$2,769.23. The claimant accepted this agreement and settlement in lieu of any claims against the company.

### **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 275:37 Equal Pay. No employer shall discriminate in the payment of wages as between the sexes, or shall pay any employee in his or her employ salary or wage rates less than the rates paid to employees of the opposite sex for equal work or work on the same operations. However, nothing in this subdivision shall prohibit a variation in rates of pay based upon a marked difference in seniority, experience, training, skill, ability, or difference in duties and services performed, either regularly or occasionally, or difference in the shift or time of the day worked, or difference in availability for other operation, or other reasonable differentiation except difference in sex. A variation in rates of pay as between the sexes is not prohibited where such variation is provided by contract between the employer and the recognized bargaining agent of the employees or, in case there is no such bargaining agent, where such

variation is provided by written agreement or contract between the employer and not less than 5 of the employees.

This part of the law mandates equal pay for equal work and bans discrimination between the sexes.

RSA 275:39 Liquidated Damages. An employer who violates the provisions of RSA 275:37 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in an additional equal amount of liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. At the request of any employee paid less than the wage to which she is entitled under this subdivision, the labor commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the liquidated damages above provided for. The commissioner shall not be required to pay the entry fee, or other costs, in connection with such action. The commissioner shall have power to join various claimants against the employer in one cause of action.

This part of the law allows for a claimant to request that the employer be held liable for the amount of the Wage Claim.

It is the finding of the Hearing Officer, based on the written submissions and the testimony provided 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 claimant had the burden to show that the company hired a male employee to perform the same job as the claimant and the company paid that employee more in wages. The claimant did not bear that burden.

The claimant did not show that all criteria and qualifications were equal in this claim. The employer has the obligation to review qualifications and determine what is equal and what is not. The areas to be reviewed are seniority, experience, training, skill and ability. The employer makes the decision on their standards and the weight given to each area reviewed.

In this case, the employer made a decision and felt the two employees hired after the claimant possessed enough different qualities so as to warrant another pay scheme. There was a 4% difference in the claimant's wage and the male counterpart's wage.

The claimant did not prevail in showing that she was equal or higher in the selected criteria. The employer placed the desired weight on the areas of concern and selected another candidate.

The claimant also signed a separation agreement that paid her a set amount of money based on two weeks of her wages. The separation agreement gave time to the employee to consult an attorney before signing and the claimant signed the agreement. The claimant agreed to waive any claims that are in any way connected to her employment. The claimant testified that she did not feel that this prohibited her from seeking equal pay for equal work. The Hearing Officer does not find this to be true. It is found that the signing of the agreement and accepting the monetary settlement, the claimant was prohibited from filing an employment claim.

The request for liquidated damages is invalid because there is no finding for the claimant. 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. This is also true for liquidated damages filed under RSA 275: 39.

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.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: October 8, 2014

TFH/klt