

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

NEW HORIZONS FOR NEW HAMPSHIRE & ANGIE'S

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses
RSA 275:43 V unpaid vacation time
RSA 275:44 IV liquidated damages

Employer: New Horizons for NH, Inc. PO Box 691 Manchester NH 03105

Date of Hearing: September 23, 2014 (closings due on October 1, 2014)

Case No. 48644

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 11, 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 2, 2014.

The claimant testified that she started to work for the employer on July 23, 2012. She worked as a "shelter assistant" at Angie's. She was an hourly employee at a rate of \$9.00 per hour. She worked on a per diem status and did receive paid time off. She stated that if a person left voluntarily they were paid their earned time.

On December 12, 2012 the claimant filled the position of Employment and Training Specialist. This position came about because of a Federal Grant to Veterans Incorporated. This group contracted with New Horizons for New Hampshire for running the program. New Horizons was to provide the personnel to run the programs and then the expenses were billed to Veterans Incorporated. The hourly rate for the claimant, while filling this position, was \$17.50 per hour for twenty hours per week. All expenses were covered by the contract between the employer and Veterans Inc.

Eventually the partnership with the employer and Veterans Inc. stopped and the grant was withdrawn. The claimant went back to her position at Angie's. The claimant testified that she had an accounting of her accrued leave and she asked if she was to be paid the time. She received the message back from her employer that because she did not take the time while working on the grant from Veterans Inc., the time was lost when the relationship ceased.

The claimant stated that on June 2, 2014 she was working at Angies for an hourly rate of \$10.00. She gave her notice to the employer and she had 65.3 hours of accrued time on the books. The claimant believes that she should be paid for this time.

The claimant is also seeking a bonus payment. She testified that after working for several months, she received a \$50.00 bonus around the December holidays. She believes all employees received this bonus. In 2013 the bonus was not paid to the claimant and to the best of her knowledge, all other employees received the bonus.

The claimant also seeks employee expenses while she was working under the Veterans Inc. grant. The testimony of the claimant was that this expense was to be paid for the mileage she traveled while in her position. The claimant did not remember if she receives an expense voucher but feels that she did submit one voucher for mileage. She does not remember what the rate was for the paying of mileage at that time.

The claimant is also seeking liquidated damages because she feels that the employer was willful and did not have good cause for not paying her the accrued time, the bonus payment or the mileage reimbursement.

The employer testified that there was a sub-contractor relationship between Veterans Inc. and New Horizons for New Hampshire. The contract was for the program to be run and staffed by New Horizons and any expenses paid by Veterans Inc. for a 100% charge back. The claimant applied for and was hired into the position of Employment and Training Specialist. The relationship continued until June 30, 2012 when the program was not renewed with New Horizons for New Hampshire.

The employer said that they contacted Veterans Inc. about the payout of accrued time for the claimant. They said if the time was not used during the term of the contract, the time was lost.

During this period of time the claimant was filling out two time cards because she was still working as a Shelter Assistant for Angie's Shelter. The employer said that the claimant did not work enough hours in a pay period to accrue vacation time under Angie's Shelter.

Any expenses suffered by the employee while under contract with Veterans Inc. were paid to New Horizons to be paid to the claimant. The employer said that there was an agreement reached with the claimant, to receive a higher hourly rate to offset any expenses. The claimant accepted this arrangement and never filed any expense vouchers once working under this plan.

The issue of bonus payment is a management prerogative. The employer stated that the Board of Supervisors recommends employees for the bonus. Not every employee gets a bonus.

The employer feels that they have done everything to see that the claimant received all wages due. The claimant did not consistently work the set number of hours needed to earn leave while working for Angie's Shelter. The claimant worked for the contract in place with Veteran's Inc. Under this contract she did accrue leave and her employer did try to recover that leave. The employer does not believe that they have been willful and that they did have good cause to believe the see that the claimant was paid all wages. There should be no finding for liquidated damages.

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 275:43 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 issues such as vacation time, bonus payments and employee expenses under the category of wages when the issues 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 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 valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and she did meet part of this burden.

The claim for a bonus payment is invalid. The claimant did not show that there was any written policy that mandated the payment of the bonus. The employer was credible in the testimony that the bonus was a management prerogative and that it was paid only after a review by a Board of Supervisors. There was no evidence that the claimant was the only employee not to receive a bonus.

The Wage Claim is also found to be invalid in the area of employee expenses. The claimant did not show any filings where she was not paid. In fact the claimant testified that she did not remember if she submitted any mileage vouchers. The employer was credible in the testimony that while they were operating under the agreement with Veterans Inc. the claimant was offered an hourly rate of pay increase to offset the payment of expenses. This hourly increase did take place and the claimant was receiving the increase.

The Wage Claim is valid in the area of accrued time. The claimant was credible in her testimony that there was 65.3 hour of accrued time when she separated employment. At the time of separation she was being paid at a rate of \$10.00 per hour. The time was earned when she was working as an Employment and Training Specialist under the grant from Veterans Inc.

It was the testimony of the employer that under the grant the employer was to administer the employees and the benefits and expenses. The Veterans Inc. was to pay all wages and/or expenses at 100%. When the grant ended the employer testified that they tried to get the payout of accrued leave and was told that it should have been used before the grant stopped. The leave was lost once the grant ceased.

The record shows that there was a payment of earned time in May of 2013 for the amount of \$147.80. It is found that this payment was billed to Veterans Inc. after payment by New Horizons of New Hampshire. It is not the responsibility of the employee to see that all expenses are accounted for during and after the grant ends.

The record shows that the claimant had 65.3 hours of accrued time. The Wage Claim is valid in the amount of \$653.00.

There is no finding for liquidated damages because it is not found that the employer was willful in their actions and they had good cause not to find the error in paying wages.

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 Hearing Officer finds that

the claimant proved by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$653.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$653.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 28, 2014

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