

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

CONWAY OFFICE PRODUCTS

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:43 I unpaid commissions
RSA 275:43 V unpaid employee expenses

Date of Hearing: December 2, 2014 and January 7, 2015

Case No. 49048

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 8, 2014. The notice was sent to the employer and there was no written objection. A Notice of Hearing was sent to both parties on November 6, 2014.

The employer came to the first scheduled hearing and stated that they never received the package of exhibits from the claimant or the Department of Labor. It was decided to send all exhibits to the employer and reschedule the hearing for after the first of the year (2015). This Notice of Hearing was sent to both parties and the hearing was scheduled for January 7, 2015.

The claimant submitted ten separate Wage Claims and they were all heard at the scheduled hearing on January 7, 2015. Collectively the amount of eight of the Wage Claims was for \$4,285.00 with an additional two Wage Claims seeking amounts that needed to be determined.

The claimant testified that he worked for the employer for over six years. There was a handbook in place for the employees. In an effort to process the entire Wage Claim the parties were asked to address each issue as it appears in the Wage Claim. This is how the hearing progressed.

Wage Claim #1. The claimant maintains that the employer owes him for two days of vacation time in the amount of \$223.04. The claimant said that this time was deducted from his accrual because he did not put in for the days but actually worked on the requested days.

The employer testified that all hours have been paid and that the claimant actually signed off on the time cards with his Manager.

Wage Claim #2. The claimant testified that he was a salaried employee and worked into a pay period before he was terminated. The claimant feels that he is due the salary for the remainder of the pay period in the amount of \$985.24.

The employer agrees that the wages are due and owing.

Wage Claim #3. The claimant testified that he is still due expense checks from April and May. He states that he is owed \$443.05. He did receive some of his other expense checks.

The employer testified that there were always problems with the claimant submitting late expense vouchers. The expenses for April and May were not submitted until September and are still being reviewed. The employer did say that all expenses submitted by the claimant were being reviewed.

Wage Claim #4. The claimant stated that there is a commission due on the rental for the National Guild of Hypnotists. He further testified that if the commission has been paid, he is owed \$134.00 as an expense.

The employer testified that all commissions on this client have been paid.

Wage Claim #5. The claimant maintains that he was denied a "spiff" on a Wide Format Install. He is looking for \$200.00 for this "spiff". The claimant felt that the employer denied the payment of the "spiff" so that they could pay the Wide Format Representative more money.

The employer testified that there were no "spiffs" in place for the job in question.

Wage Claim #6. The claimant alleges that there was a violation of the Code of Conduct by the employer. He is asking that the Department of Labor assess a penalty for this violation.

The employer testified that the company did not have a Code of Conduct. The only one they could think of was the Code of Conduct from Xerox.

Wage Claim #7. The claimant is seeking Revenue on Protected Accounts. The Wage Claim was filed for \$2,025.00 and this amount was reduced in the hearing to \$1,765.00. The claimant maintains that he was assigned a protected account and any split of the commission should not be placed on a Protected Account. This account was an installation account. The claimant testified that other deals did not have to be split with other employees. He said that on this particular account he was forced to split his commission.

The employer testified that there is no basis for this claim. The claimant raised this issue many times and the answers were provided. The claimant kept coming back with the same question.

The claimant was known to place a lot of emphasis on certain "titles" for the employees. The employees were often designated by a title on the web-site and this was only for identification purposes. This practice was not a part of any wage plan.

Wage Claim #8. The claimant testified that he worked for four years without "splits". Now he has some accounts where there are "splits" involved. The claimant said that this was the YMCA account. He is seeking \$853.00 in past paid out "splits".

The employer testified that this was not an account where the claimant was entitled to any "splits". Any service commission is between the GO Rep and the service technician. The claimant was paid some money on this account because there was a decision by the Manager and the Service Manger to pay the claimant.

Wage Claim #9. Payment of Production Installs. The claimant testified that he was to receive 50% of new "installs". The employer dropped him to 20% without any written notice. The claimant said that he is due \$1,407.00 in unpaid "install" charges.

The employer testified that this practice fell under the category of new equipment. These units were not new and yet the claimant submitted his claim as if they were new units. The employer also stated that all pay plans are reviewed with the employee on a yearly basis. All plans are in writhing when reviewed.

Wage Claim #10. The claimant testified that when he was hired he was to receive 100% of all rental fees. He said as the years went on he was "grandfathered" into this plan. The claimant believes that any rental fees should be paid directly to him and that the company should make a profit out of any supplies sold to use the machines. The claimant is seeking a total of \$103,359.60 in rental fees paid to the company.

The employer testified that this practice was changed in 2013. This practice is no longer a part of the wage plan.

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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or

(e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

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. This section deals with salary and commissions.

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 part of the law places issues such as vacation time and employee expenses into the category of wages when the time and expenses 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 in part and invalid in part. The Wage Claim was filed as ten separate Wage Claims but they were all addressed at the same hearing.

Wage Claim #1 is valid. The claimant was credible in his testimony that the time was worked and not taken. There were no leave slips presented and so the claimant prevails in the amount of \$223.04.

Wage Claim # 2 is valid. The claimant showed that he worked part of a pay period and that he was not paid for the whole pay period. He was a salaried employee. The employer admitted that this pay period was due to the claimant. The amount for this part of the Wage Claim is \$985.24.

Wage Claim #3 is moot. The employer showed that they did send three expense checks to the claimant. The testimony showed that the claimant did not submit his expenses for April and May until September. The employer was credible in their testimony that this was a practice of the claimant and that the submitted expenses were being reviewed. The claimant can file a separate Wage Claim if he finds that the three expense checks do not satisfy his claim for outstanding expenses.

Wage Claim #6 is moot because the claimant is asking for a penalty for a violation of a Code of Ethics. This is not something that can be assessed against the employer in a Wage Claim.

Wage Claim #4, #5, #7, #8, #9, and #10 are all invalid. The claimant worked for the company for over six years and these issues were not brought up in a formal complaint until the

Wage Claim(s) were filed. The employer was credible that there were yearly presentations of the wage plan and that the changes were reduced to writing. Again, the claimant worked under these plans.

The claimant was not credible in his testimony that commission, SPIFFs and rentals were due. The claimant did not meet his burden to show that there were wages due and owing in these areas

The Wage Claim is valid in the amount of \$1,208.28.

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 \$1,208.28.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,208.28, less any applicable taxes, within 20 days of the date of this Order.

All other parts of the Wage Claims are invalid, moot or not resolvable in this forum.

Thomas F. Hardiman
Hearing Officer

Date of Decision: February 10, 2015

TFH/kdc