

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



v

**WT Adams Wholesale LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43-b unpaid salary  
RSA 275:44 IV liquidated damages

**Date of Hearing:** January 15, 2015

**Case No.:** 49138

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of his wage claim, that he was owed \$3,396.26, net, for August 2014 and September 2014 salary. He argued he was paid \$2,500 gross salary for each month, with the pay period beginning on the 12<sup>th</sup> of the month.

At the hearing, he amended the claim to add unpaid salary for May 2, 2014 through May 11, 2014. He further seeks liquidated damages on these unpaid wages.

He previously submitted documentation from zipcar reservations, which he used from transportation to commute to work, text messages, mobile phone bills, emails, and software log in sheets

The employer agrees the claimant is due \$2,500 for the month of August 2014. He denies the claimant is due any further salary for May or September 2014. He contends the claimant began physical work on May 12, 2014, not May 2, 2014, and ended his employment on September 12, 2014. The claimant did not perform any work after September 12, 2014, due to illness.

He further argues the company was in financial distress. Revenue began declining in June 2014, and continued to do so, such that he has filed personal and business bankruptcy. As such, the business is closed.

The hearing was left open until 4:30pm on January 29, 2015, for the employer to submit notice of his personal and business bankruptcy filings. The employer failed to submit any documentation to this Department.

## FINDINGS OF FACT

The claimant provided credible testimony and evidence, previously submitted, that he worked for the employer from May 2, 2014 through September 19, 2014, when he resigned his employment. He received a monthly salary of \$2,500, gross, with the pay period beginning on the 12<sup>th</sup> of each month and ending on the 11<sup>th</sup> of the following month.

Both parties agree the claimant did not receive any wages for the period of May 2, 2014 through May 11, 2014, the August 2014 salary, nor for September 12, 2014 through September 19, 2014.

### RSA 275:43-b Payment of Salaried Employees. –

I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

(a) Any pay period in which such employee performs no work.

(b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.

(c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.

(d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.

(e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

The claimant began work, after the pay period had commenced, on May 2, 2014 and the pay period ended May 11, 2014. For this period he is due a pro-rated salary amount of \$875.00 ((\$2,500/twenty work days in the pay period)\* eight days worked).

Both parties agree he is due his full salary for August 2014 in the amount of \$2,500.00.

The claimant terminated of his own accord on September 19, 2014, six days into a pay period of twenty-one days and is due a pro-rated salary of \$714.29 (((\$2,500/twenty-one work days in the pay period)\* six days worked).

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages in the amount of \$4,089.29 (\$875.00 + \$2,500.00 + \$714.29).

The claimant argued he is due liquidated damages pursuant to RSA 275:44 IV as the employer willfully and without good cause failed to pay all wages due within the time required by the statute.

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" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The employer provided credible testimony that the company was in financial distress and was unable to pay the claimant his wages that he agreed were due for the month of August 2014. The employer held a genuine belief the claimant was not due wages for May 2, 2014 through May 11, 2014 or September 12, 2014 through September 19, 2014.

The Hearing Officer finds that the employer did not have the funds to pay the claimant the wages due. Also, the employer's argument that he held a genuine belief the wages for May 2, 2014 through May 11, 2014 or September 12, 2014 through September 19, 2014 were not owed, is persuasive. Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay her all wages due in the time required because the employer had a genuine belief that the wages were not owed.

### **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 Department finds that the claimant proved by a preponderance of the evidence that he is owed the claimed wages/salary, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$4,089.29.

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.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: February 5, 2015

MJD/kdc