

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

University of New Hampshire

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: University of New Hampshire, 25 Concord Rd., Lee, NH 03861

Date of Hearing: January 14, 2015

Case No.: 49197

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that the employer is liable for liquidated damages in the amount of \$8,781.00.

At the hearing, the claimant amended the amount of the liquidated damages to \$1,410.44. He originally felt the employer owed \$1,610.44, but they paid \$200 in liquidated damages, leaving \$1,410.44.

He argues that the employee handbook states that all wages are paid on the termination date, in this case, October 13, 2014. The employer did not pay all wages due until October 17, 2014, one day later than allowed by the law.

He further argues it was not his fault. He also stated it does not matter if the employer was willful in not paying him or not, he is owed liquidated damages because they paid the wages late. He agrees there "was no conspiracy" not to pay him, but that "Peter does not know what Paul is doing."

The employer argues the claimant is not due any liquidated damages as they were not willful in their failure to pay all wages due within the prescribed timeframe.

Pursuant to their policy, the process to terminate an employee is performed in two steps. They call a meeting with the employee to discuss the issue, in the case of this claimant, they held the meeting on Thursday, September 25, 2014, to discuss his poor performance. Typically, a follow up meeting is held the following day. The claimant was not available the following day so they held the second meeting on Monday, September 29, 2014, at which time the employer terminated the claimant's employment.

His benefits and pay continued for a two week period, pursuant to the policy, resulting in a termination date of October 13, 2014.

The claimant did not receive payment for all wages due on October 13, 2014, as he should have per their policy. Normally, the first meeting is held on a Thursday, with the follow up meeting the following day, Friday. The paperwork is processed and the final payment is made on the actual termination date, two weeks hence. Because the claimant was not available on Friday, September 26, 2014, the second meeting for his termination occurred on Monday, September 29, 2014. A glitch in the system did not process his payment for Monday October 13, 2014, as it was off the regular payroll cycle. As there were still additional hours for payment for October 13, 2014, the system also did not produce the check for the claimant's earned time. As soon as the employer became aware of this, they manually cut a check for October 13, 2014, and the earned time he had accrued. He received this this payment on Friday, October 17, 2014, the regularly scheduled payday. The employer also included \$200 in payment liquidated damages for the late payment for the October 13, 2014, date.

FINDINGS OF FACT

At the hearing, the parties agreed with the sequence of events from the claimant's initial meeting on September 25, 2014, through the receipt of his final payment on October 17, 2014.

The claimant argued that it does not matter if the employer was willful in not paying him or not, he is owed liquidated damages because they paid the wages late. He agreed there "was no conspiracy" not to pay him, but that "Peter does not know what Paul is doing."

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 Hearing Officer finds the employer's argument that a series of abnormal circumstances led to part of the wages being paid one day later than required by RSA 275:44 IV, genuine. The employer also paid liquidated damages for the wages earned portion of the claim of their own accord, in a good faith effort.

The claimant has the burden in this matter to prove that the employer willfully and without good cause failed to pay wages due within the prescribed timeframe, under RSA 275:44 IV. He admitted they did not do so.

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 him all wages due in the time required because the employer process encountered a series of abnormal errors. The employer did not act in a willful manner in their failure to pay all wages due.

DECISION

Based on the testimony and evidence presented, 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 Wage Claim for liquidated damages is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 23, 2015

MJD/kdc