

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Key Auto of Manchester LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid commissions
RSA 275:43-b unpaid salary

Employer: Key Auto of Manchester LLC, 549 RT 1 Bypass, Portsmouth
NH 03801

Date of Hearing: February 23, 2015

Case No.: 49372

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$3,200.00 in unpaid wages/salary as his pay schedule included a guarantee of \$6,000 per month, which he did not receive for the month of September 2014. He received a weekly salary of \$700 each Friday, with a \$3,200 payment on the 15th of the month to make up the difference for the guarantee.

The claimant had been the finance manager and took over as the store manager when the employer had difficulty finding a replacement for the prior store manager. In his prior role as finance manager, he received a weekly salary of \$700.00. The new pay plan continued the same weekly salary, with the balance of the guarantee to be paid on September 15, 2014. Initially, the claimant had been asked to take the role of store manager for the month of August 2014 only, while the employer searched for a store manager. Within a few days of his assuming the role of store manager, the employer asked him to stay on as the store manager. He agreed with some caveats as to changes he wanted made at the store. The employer initially agreed. He did not discuss wages with the employer at that time.

The claimant worked all of August 2014, receiving his \$700 weekly salary, and on September 15, 2014, received his monthly balance of the guarantee of \$3,200. The claimant worked all of September 2014, receiving his \$700 weekly salary. Near the end of September or early October, the employer said they would not institute one of the changes the claimant had required to stay on as store manager. The claimant decided he would not stay on and inquired with Human Resources if he would receive his

October 15, 2014, guarantee if he left before October 15. He was told he would. His final day of employment was October 11, 2014.

The employer argues the claimant only was promised the \$6,000 guarantee for the month on August 2014. He signed the agreement on August 8, 2014, which stated the pay plan was for the August only. When September approached, Ms. Gaudette, the Human Resource Manager, reverted his pay back to the wages he received as the finance manager, prior to August 2014, even though he continued in the role of store manager. She had inquired with senior management regarding the claimant's pay plan, and did not receive any instruction to keep the plan at the notified rate for August 2014 only.

FINDINGS OF FACT

The claimant worked for the employer as store manager from August 2014 through October 11, 2014, when he resigned. The employer originally offered the wages of a guarantee of \$6,000 per month for the month of August 2014 only, as they planned on having a permanent manager in place for September 2014. The claimant signed a pay plan to this effect on August 8, 2014, fully aware the pay arrangement affected August 2014 only. The claimant received the same weekly salary he had in his prior position, but would receive the balance of the guarantee on the 15th of September 2014.

The employer then asked the claimant to stay on as store manager permanently. He agreed with some caveats as there were changes he wanted made on a business level at the store in order to become more profitable. The employer initially agreed. No discussion occurred regarding the claimant's rate of pay.

The claimant worked all of August 2014, receiving his \$700 weekly salary, and on September 15, 2014, received his monthly balance of the guarantee of \$3,200. The claimant worked all of September 2014, receiving his \$700 weekly salary. Near the end of September or early October, the employer said they would not institute one of the changes the claimant had required to stay on as store manager. The claimant decided he would not stay on as store manager. His final day of employment was October 11, 2014. He did not receive the monthly guarantee of \$3,200 on October 15, 2014, as he had for September 2014.

The employer did properly notify the claimant as to the rate of pay, as required by RSA 275:49, for the \$6,000 guarantee for August 2014 only. His wages then reverted back to the pay plan he had been paid as the finance manager prior to August 2014.

The claimant argues that because he stayed in the role of store manager and did not return to his prior role, the wages should have been paid at the \$6,000 guarantee rate.

The claimant's argument is not persuasive. RSA 275:49 requires an employer to notify an employee, in writing, as to their rate of pay. The employer executed a proper notification for August 2014 only. Whether or not the claimant maintained the same title past August 2014, the notification of pay clearly stated August 2014 only. The employer paid the claimant according the notifications of pay, which the claimant signed.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages.

DECISION

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 failed to prove by a preponderance of the evidence that he is owed the claimed wages/guarantee, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: March 16, 2015

MJD/slh