

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

AFL TELECOM

DECISION OF THE HEARING OFFICER

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

Employer: AFL/ALTA Network Services, 1223 Steel Circle, Bushkill, PA 18324

Date of Hearing: February 12, 2015

Case No. 49431

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 1, 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 January 12, 2015.

The claimant testified that he was hired as a part-time temporary employee on June 1, 2014. He was an hourly employee and he had a per diem pay plus employee expenses.

The claimant said that he went through all of the required tests for an employee and was sent to New Hampshire to offset work that was not being done because of an employee strike. The claimant said that he was missing six paychecks and could not get an accounting of their payment. He stated that he had gone through twelve different people to seek an answer to his request for an accounting of his wages.

The claimant said that because of his request for the accounting, he was terminated from his job. He made arrangements to fly back to his home in Florida and the employer failed to reimburse him for the expense of returning home.

The claimant also feels that the employer was willful and did not have good cause for not reporting his lost pay and his expenses for the flight home to Florida. The claimant is seeking \$4,200.00 for the Wage Claim and a total of \$8,400.00 which includes the liquidated damages.

The employer came to the hearing with a check to settle the expenses part of the Wage Claim. A check for \$276.10 was given to the Department of Labor and sent to the claimant.

The employer also testified that they reviewed the situation where six checks were missing. The review showed that six checks had been deposited to a Sun Trust Bank account bearing Mr. Anello's name. The deposits were all made to the same branch of the bank on six separate dates. The total of these checks came to \$3,651.53.

The employer also stated that there was an attempt to resolve the expense issue and the claimant would not respond to their inquiries.

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.

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 and issue such as employee expenses into the category of wages when the expenses 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 if there is a finding by the Hearing Officer 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 invalid. The claimant has the burden to show that there are wages due and he did not meet this burden. The facts show that there was a communication breakdown in the employment structure and this led to confusion.

The employer paid the expenses due for the claimant's flight home and associated expenses. It was paid at the hearing but it appears there were some communication difficulties.

The six missing payroll checks were the issue in the Wage Claim. The employer presented a document that shows there were six deposits made to the account of the claimant, at the claimant's designated bank and they were all made to the same branch. These deposits totaled \$3,651.53.

There is no finding for liquidated damages because, in spite of the communication difficulties, the wages were paid. The employer was not willful in their actions.

The Wage Claim is invalid.

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 Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 13, 2015

TFH/kdc