

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

Genter Healthcare Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:48 I/II illegal deductions

Date of Hearing: February 12, 2015

Case No.: 49537

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$514.36 in unpaid salary for weeks she worked, November 1, 2014 through November 11, 2014, in which she did not receive her full salary. For the week ending November 7, 2014, she received \$233.81, gross, of her regular salary of \$467.62. For the week ending November 14, 2014, the employer terminated her employment and paid her \$187.05, gross. She seeks the balance to make her full salary for both weeks of \$514.36.

The claimant testified she gave a verbal notice to the employer stating her last day would be November 21, 2014, whether she had another job or not. The employer notified the claimant on November 11, 2014, that her employment was terminated as of that date.

The employer denies the claimant is due any further salary. The claimant did not work a full forty hours each week and they used her earned time to complete the hours worked for her full salary. At some point, the claimant's earned time had been depleted and she had a negative balance. The employer continued to pay her full salary and her earned time continued in a negative balance. The claimant did not earn additional earned time as she did not work the required balance.

The employer testified the claimant verbally resigned stating her last day would be within the next sixty days. At some point the claimant asked how much of a notice she had to give as she planned on leaving as soon as she procured another job.

The employer had the claimant train other staff on her daily tasks. On November 11, 2014, the claimant has finished the training of other staff and they terminated her employment that day.

FINDINGS OF FACT

The claimant worked for the employer from June 2010 through November 11, 2014. At all relevant times for this claim, the claimant was classified as a salaried employee with a \$467.62 weekly salary.

The claimant did not receive her full salary for pay period ending November 7, 2014 nor November 14, 2014. She performed work for the benefit of the employer during both weeks.

For the pay period ending November 7, 2014, she received \$233.81, gross. The claimant worked five days during this pay period

For the pay period ending November 14, 2014, she received \$187.05, gross. The claimant worked two days during the pay period. The employer terminated her employment on Tuesday, November 11, 2014.

The employer made the deductions from the claimant's salary because her earned time had a negative balance.

RSA 275:43-b requires that an employer pay a salaried employee their full salary for any pay period in which the employee performs any work. It also allows employers to make deductions to a salaried employee's wages under certain circumstances, but none of those exceptions apply to the facts of this case.

RSA 275:48 Withholding of Wages I (f) Allows an employer to make deductions from an employee's wages if they have first secured a written authorization by the employee for the deduction of earned time pay:

(f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

The employer is required by RSA 275:43-b to pay the claimant's salary in full, for any pay period in which she performs any work.

The employer is not authorized to make any deductions from the claimant's wages for earned time because it is in a negative balance as the employer did not procure the necessary documentation in writing at the time the claimant requested the time off, which created a negative earned time balance.

Therefore, the claimant proved by a preponderance of the evidence she is due the claimed salary/wage of \$514.36.

The claimant requested to add liquidated damages as an issue during her closing statement at the hearing.

Pursuant to Lab 204.02 Specification of Issue. Hearings before a hearing officer shall be scheduled for the determination of specified issues duly listed for hearing on the hearing notice. The department shall expand the scope of a scheduled hearing if notice of the added issues, with necessary documentation is given to all parties at least 14 calendar days prior to the assigned hearing date. Issues may be added at any time without such notice with the consent of all parties.

DISCUSSION

The claimant raised the issue of RSA 275:44 IV, liquidated damages, for the first time at the hearing.

This issue was not noticed for the hearing nor can issues be added without the consent of all parties. However, in the interest of expediency to all parties, the following information is provided.

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 has held the claimant is not due her full salary for the pay periods in which they made the deductions. They held a genuine belief they were within their rights to make the deductions because the claimant's earned time balance was in the negative and she did not work her fully scheduled forty hours in each pay period.

The claimant would have the burden to prove by a preponderance of the evidence that the employer voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed, fails to pay them.

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 she was not paid all wages/salary due, it is hereby ruled that the Wage Claim is valid in the amount of \$514.36.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$514.36, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: February 25, 2015

MJD/kdc