

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

CUMULUS BROADCASTING LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid commissions

Employer: Cumulus Broadcasting LLC, 3280 Peachtree Rd NW. Ste 2300, Atlanta, GA 30305

Date of Hearing: March 10, 2015

Case No. 49682

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on January 7, 2015. The notice was sent to the employer and there was no written objection to the Wage Claim. The Notice of Hearing was sent to both parties on February 10, 2015. The employer was represented by the Director of Human Resources at the Hearing. The Wage Claim was filed for \$7,833.45 in unpaid commissions.

The claimant testified that in November of 2011 the current employer took over the company. The claimant said that he was always paid, based on a commission with a draw wage plan. He said that commissions were always paid on receipt but the new employer changed this practice, after a year, to pay on billing. Because of this change, the claimant lost commissions that had been earned.

The employer asked that employees, such as the claimant, sign off on the new plan. The claimant and the other employee did not do so and the claimant complained to his supervisor about the lost commissions.

The employer testified that the claimant continued to work under the new plan and therefore accepted the plan. The employer did say that had the claimant resigned at the start of the new plan, he would have been paid the commissions earned.

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.

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Issues such as commissions' falls under this section of the law as the commissions are considered wages.

It is the finding of the Hearing Officer, based on the written Wage Claim and the testimony of the parties, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant was credible in his testimony that he had earned the commissions and that they were lost because of the change in the payment system. He was also credible in stating that he brought this to the attention of his supervisor and nothing was done. The new payroll plan was never signed by the claimant because of this issue.

The employer testified that because the claimant worked under the new system he actually accepted the practice. However, the employer did say that if the claimant resigned his position when the new plan went into place, he would have been paid the commission that had been earned.

The Hearing Officer finds that the commissions were earned and therefore became wages. These wages cannot be withheld and not paid. The claimant did work under the new plan but the wages earned prior to the plan going into place, cannot be just lost.

The Wage Claim is valid in the amount of \$7,833.45.

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 Hearing Officer finds that the claimant proved that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$7,833.45.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$7,833.45, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 25, 2015

TFH/kdc