

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Claremont Chamber of Commerce Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid bonus
RSA 275:43 V unpaid vacation pay
RSA 275:43-b unpaid salary
RSA 275:44 IV liquidated damages

Employer: Claremont Chamber of Commerce Inc., 24 Opera House SQ,
Claremont, NH 03743

Date of Hearing: April 14, 2015

Case No.: 49852

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$5,303.34. She claimed \$54.17 in unpaid bonus, \$519.50 in unpaid salary, and \$2,078.00 in unpaid vacation pay. She further sought liquidated damages.

She removed one dollar in wages and one dollar in liquidated damages due to a mathematical error on her part, prior to this hearing.

The claimant received two checks from the employer prior to this hearing. She chose to continue for the balance of her claim.

At the hearing, the claimant amended her claim to \$605.67 for 23.32 hours of vacation pay at an estimated \$25.97 per hour. She based this estimation on a forty hour week with a weekly salary of \$519.50; \$53.18 in unpaid bonus; and \$1,507.51 in liquidated damages.

The employer argued that the claimant had been paid everything that she was due and additionally, everything that she had asked for, other than liquidated damages. Between her termination in January 2015 and this hearing, the claimant had presented six different sets of numbers of the items she felt were due. They paid everything that she asked for, with the exception of liquidated damages.

FINDINGS OF FACT

The claimant worked for the employer as Executive Director from February 11, 2013 through January 15, 2015, when the employer terminated her employment. She received a bi-weekly salary of \$1,039.00.

The claimant argued she is due an additional \$54.18 in unpaid bonus. She argued the written agreement stated she would earn "10% of net new membership revenue." The balance due to her for the new members she brought in is \$54.18.

She further argued that she did not understand "net" to mean after any deductions for the loss of members. She believed net would be after any fees might be taken out, though she admitted she did not know of any fees that could be deducted.

The employer argued the claimant did not have any bonus due after the deduction for the members who left during the same time period, hence the "net" in the written agreement. As the loss of members had been greater than the gains with the new members, no bonus is due.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including any bonus programs, at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the bonus program.

The Hearing Officer finds the employer's argument that "net" included the loss of any members during the bonus period, persuasive. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed bonus.

The claimant originally argued she was due four weeks of vacation pay at \$519.50 per week, or \$2,078.00. She amended her claim at the hearing, after payment from the employer, to 23.32 hours of vacation pay, or \$605.67. She estimated \$25.97 per hour, based on a forty hour week with a weekly salary of \$519.50.

The claimant was unable to articulate the calculation for the original or amended vacation pay, only that she subtracted payments received after she filed the wage claim from the totals owed. She did not present any evidence of the vacation time she had accrued.

The Hearing Officer finds that the claimant erred in her calculation for the vacation pay. A weekly salary of \$519.50 with a forty hour work week yields an hourly rate of \$12.99. For 23.32 hours of vacation pay, the total would be \$302.87.

The employer credibly testified they paid the claimant all vacation pay due.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she was not paid all vacation pay due.

The claimant sought liquidated damages on wages owed and wages paid later than allowed by statute.

As no wages are found to be due, no liquidated damages can be assessed regarding the wages claimed in the hearing.

The claimant argued that wages previously paid in full, were in fact, paid later than allowable by statute. Specifically, the employer only paid her one week of her biweekly salary when they terminated her employment. Upon notice from her, the employer consulted counsel, who instructed them to pay the remaining week of salary. They did so immediately.

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 they held a genuine belief they had paid the claimant all salary due, persuasive. Once they were notified by the claimant of an issue with her salary, and upon consult with counsel, they paid the balance immediately.

Therefore, 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 her all wages due in the time required because the employer had a genuine belief that the wages were not owed.

The claimant did not clearly articulate the other wages for which she claimed liquidated damages, other than to say the employer did not pay all wages due within the timeframe required by statute.

The claimant has the burden to prove that the employer willfully and without good cause failed to pay all due within the required timeframe. She did not meet the burden set forth in Ives v. Manchester Subaru, Inc. 126 NH 796 that the employer, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed" failed to pay the wages. 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".

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay her all wages due in the time required.

DISCUSSION

The claimant provided several sets of wages believed to be due to this Department, both in the original wage claim and after additional payments had been received from the employer.

She did not provide any evidence for her original claim. She amended her claim at the hearing, and did not provide any accounting for the payments other than totals now due.

The Hearing Officer was not able to determine the accounting process and did not arrive at the same numbers provided by the claimant.

The claimant has the burden in these matters to prove by a preponderance of the evidence she is due the wages claimed. She did not meet that burden.

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 she is owed the claimed bonus/wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

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.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 27, 2015

MJD/kdc