

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Somersworth Nissan Hyundai Inc

DECISION OF THE HEARING OFFICER

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

Date of Hearing: May 19, 2015

Case No.: 49997

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$3,000.00 in unpaid commissions. He argues he is due \$1,200 for May through mid-June of 2014 when he was in the service department and \$1,800 for mid-June through August 2014 in the parts department.

The employer denies the claimant is due any commissions for May and June 2014 as they had a company meeting in May 2014 in which the employees were verbally informed that all pay plans were changing. The claimant moved into the parts department in mid-June through August 2014, when he terminated. This position did not have any commission structure offered to the claimant as he was in training.

FINDINGS OF FACT

The claimant worked for the employer from April 2013 through his termination in August 2014. He began as a salesperson and transitioned into the service department in January 2014. He then moved to the parts department in June 2014.

The claimant argues he is due \$1,200 for May and June 2014 as a member of the service department.

The employer held a company meeting in May 2014 in which they discussed changing the pay plans for the service advisors. The employer failed to reduce any changes to writing.

RSA 275:49 I requires that an employer inform employees of the rate of pay 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 agreed they were unable to produce a signed acknowledgement form from the claimant that he received notice his rate of pay had been changed. As such, they calculated the claimant would have received \$187.37 for May 2014 and \$288.84 for June 2014 under the prior pay plan.

The employer provided credible testimony and evidence that the claimant was not reading the commission slips properly, and therefore, the claimant's calculated commissions were incorrect.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the claimed \$1,200. However, the Hearing Officer finds calculations as presented by the employer for May and June 2014 commissions to be due, in the amount of \$476.21.

The claimant argues he is due \$1,800 in commissions for June 2014 through August 2014. He agrees he did not receive any promise or notification that he would receive commission in his new position in the parts department.

Again, the employer is required by RSA 275:49 to notify the claimant in writing as to his rate of pay. The employer notified the claimant of his salary but never indicated that commission was a part of his compensation package.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the claimed \$1,800 commission for June through August 2014.

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 he is owed a portion of the claimed commissions/wages, it is hereby ruled that the Wage Claim is valid in the amount of \$476.21.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$476.21, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 5, 2015

MJD/kdc