

STATE OF NEW HAMPSHIRE

DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

INTEGRATED RESEARCH

DECISION OF THE HEARING OFFICER

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

Employer: Integrated Research, 6312 S Fiddlers Green Cr. Ste 500N, Denver, CO 80111

Date of Hearing: August 11, 2015 and September 15, 2015

Case No. 50274

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 17, 2015. 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 July 24, 2015. The hearing was continued for a second day because of an evidence situation and the second Notice of Hearing was sent on August 20, 2015.

The claimant testified that he worked for the employer with a salary plus commission pay plan. This Wage Claim is only for unpaid commissions. The claimant further testified that the pay plan was in writing and he signed it and was aware of the agreed upon provisions. The claimant said that in this case there were two projects that he sold. The wage plan had him receive one half of the commission when the project was sold. Instead, the claimant received the one half of the total commission right after the projects were sold.

The problem that resulted was not one that was under the control of the claimant. The claimant testified that he knew a deal had to be completed in a set amount of days in order for the commission to be paid. However, the employer was undergoing some personnel changes in the Accounts Receivable Division. The company, in the claimant's opinion, was having difficulty in collecting on projects sold. The claimant offered to help the employer with collections but was not allowed to do so. Both of the sold projects were also slow to start another factor that the claimant did not have any control over.

The claimant further testified that the policy was known but he believed that other employees were paid for their commissions after the time frame, set by policy, had expired. The claimant feels that the employer had set a past practice of paying commissions outside of the

established timelines . The claimant was also told by a former supervisor that he would work with the company to have the commissions paid.

The claimant voluntarily left the employ of the company.

The employer testified that there were written policies in place and they were clear to the employee and known by the employee. The Human Resource Manager testified that she was in her position for four and a half years and in that time there was only one payout beyond the 60 day limit and that was for a fifteen year retiring employee.

The employer testified that they follow International Accounting Standards in their collection process. There was one position that was replaced by a part-time employee but there other employee that were dedicated to full time collections.

The employer further testified that their policy fully expects deals to be closed within a 30-60 day time period. These two deals, giving rise to the commissions questioned by the claimant, were not closed within the established time frame and were lost because of that fact and the fact that the claimant left the employ of the company.

The employer testified that they followed all of their written procedures and the fact that there was a natural turnover in Accounts Receivable did not place these deals in any problem collection system. The employer maintains that the claimant did sign off on the policy and knew the policy when he voluntarily resigned. The claimant placed himself in risk.

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 section of the law mandates that an employer pay an employee all wages due at the time the wages are due and owing. The law also places commissions under this section when the commissions are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

Under New Hampshire law the employer has to make policies known to employees. In this case the employer had a written policy in place and it was known to the claimant. The purpose of a Wage Claim hearing is to rule on wages and not on the fairness of policies. The employer followed their policy in this case.

The claimant did offer to help to speed up the process of payments. This was outside of his job specifications and the company proceeded on their normal course of conducting business. The claimant knew the policy of the commission payments and took the risk of resigning his job prior to the completion of the sales agreement.

The employer followed their known policies. The Wage Claim is invalid.

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 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: September 28, 2015

TFH/kdc