

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Port City Nissan

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/bonus
Employer: Port City Nissan, 120 Spaulding Tpke, Portsmouth, NH 03801
Date of Hearing: July 15, 2015
Case No.: 50444

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$7,967.00 in unpaid bonus for the period of September 2014 through April 2015. She argues she is due a 3% bonus on all internet sales made during this period.

The employer outsourced the Business Development Center (BDC), where she was employed, and she moved into another position. The employer did not provide her with a new pay plan.

The employer denies the claimant is due any further wages. They argue the claimant had previously been paid a base salary of \$1,000 per week with a 3% commission for any internet sales she facilitated. In September 2014 they outsourced the BDC and the claimant moved into another position. They did not provide a new pay plan to the claimant in September 2014 as she retained the base weekly salary of \$1,000. As she did not have any opportunity to facilitate internet sales, she simply did not earn any commission.

FINDINGS OF FACT

The claimant worked for the employer from February 2013 through September 2014 as the Internet Sales Manager. In this position she received a weekly base salary of \$1,000 and a 3% commission for any internet sales she facilitated.

In September 2014, the employer outsourced the BDC, the department in which the claimant had been employed. The claimant began a new position with different responsibilities. She received a weekly salary of \$1,000. She did not have the opportunity to earn commissions or bonus on internet sales.

The claimant argues she is due the claimed bonus because the employer did not provide a new pay plan for her position in September 2014.

The employer argues they did not need to notify the claimant of a pay change as the base salary remained the same. She simply did not have the opportunity to earn any internet sales commissions. Neither did she turn in any commission sheets for the time period claimed, as she had been required to do as the Internet Sales Manager.

The Hearing Officer finds the employer did not change the pay plan for the claimant. She received the weekly salary according to her pay plan. She did not perform the functions in order to earn any commission, therefore, no commissions are found to be due.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed wages/bonus.

Even if the employer had changed the claimant's pay plan, the claimant credibly testified that Mr. Kevin Shevlin had verbally notified her in September 2014 that she would continue her \$1,000 weekly salary and that she would not be earning any commission moving forward. The employer verbally notified the claimant of the change. Even though the employer did not reduce this arrangement to writing, this does not automatically guarantee the claimant her salary retroactively. The claimant was informed, verbally, that she would no longer receive bonus/commissions. The claimant knew that she would not be receiving her previous bonus/commissions.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet her burden in this claim.

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 wages/bonus, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: July 29, 2015

MJD/kdc