

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Denron Plumbing & HVAC LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/commissions
RSA 275:43 V unpaid vacation and holiday pay
RSA 275:48 I/II illegal deductions/failed obligation
RSA 279:21 VIII unpaid overtime pay

Employer: Denron Plumbing & HVAC Inc, 605 Front St, Manchester, NH 03102

Date of Hearing: September 23, 2015

Case No.: 50821

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed wages for commissions, a promised raise, and vacation time. At the hearing, he clarified he is owed a total of \$34,903.00 in unpaid wages, \$9,360.00 calculated at \$2.00 per hour for forty-five hours per week between June 2013 and June 2015, for a raise promised by the employer and \$25,543.00 in unpaid commissions, only.

The employer denies the claimant was not paid all wages due. The claimant received an hourly wage of \$28.00 per hour, and a 1% commission on projects that generated at 28% final gross profit margin. Too many of the claimant's projects did not have the required margin, and many projects cost the employer financially.

The claimant did receive an increase of \$0.85 per hour in March 2014, to help incentivize him to increase his performance level.

The written policy regarding vacation pay, which the claimant signed on March 4, 2013, notice him that upon voluntary resignation/quit or fire/discharge he would "lose all benefits, for example – you lose: all accumulated or unused vacation pay, all accumulated or unused free days, holidays, bonuses, profit sharing, retirement funds (excluding vested portion), pool, reimbursement of education, etc."

At the hearing, the employer presented a check to the claimant for \$1,191.14, gross, for projects which showed a final gross profit margin of 28% or more. They pieced together information left by the claimant to credit him for these sales as he left poor records. They agree some items may be missing because they are unable to find documentation to credit them to the claimant.

The hearing was left open until 4:30pm on October 7, 2015, for the claimant to submit a list of jobs he sold. The claimant submitted the documentation within the

required timeframe. The employer provided a response to the claimant's documentation and a closing statement. The claimant provided a closing statement.

FINDINGS OF FACT

The claimant worked for the employer from March 4, 2013 through June 8, 2015, when the employer terminated his employment.

The claimant, at the hearing, agreed the employer did not promise a \$2.00 per hour raise. There were many discussions over his employment about a \$2.00 per hour raise, however the employer never instituted this raise. The claimant did receive an \$0.85 per hour raise in March 2014.

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 did not notify the claimant verbally or in writing that he was to receive a \$2.00 per hour raise.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the claimed \$2.00 per hour raise.

The claimant originally alleged he sold jobs totaling \$25,543 in commissions.

At the hearing, the employer provided the claimant a check for \$1,191.14, gross, for projects which showed a final gross profit margin of 28% or more. They had pieced together information left by the claimant to credit him for these sales as he left poor records.

The employer, in response to the claimant's October 5, 2015, documentation of jobs sold, provided a check in the amount of \$2,923.65, gross, for twenty-nine jobs which yielded a 28% or greater final gross profit margin, documentation previously submitted.

In his response to the employer's October 13 2015, submission, he amended his claim for commissions/wages to \$19,950.35, for "a job well done and earned."

The employer's documentation showed the claimant's commission was calculated at 1% for jobs with a final gross profit margin of at least 28%.

The claimant provided a listing of jobs sold. The employer provided information regarding jobs performed, final gross profit margins, and jobs missing estimate information.

The claimant's list of jobs sold is not a persuasive argument that commissions are owed.

The claimant did not provide documentation to show that the jobs were performed or that the jobs realized a final gross profit margin of 28%.

The employer provided credible and persuasive documentation to show which jobs were performed, final gross profit margins and completeness of recordkeeping and

estimates. They provided a check to pay the claimant for the jobs which they could credit to his sales and which yielded a final gross profit margin of at least 28%.

The Hearing Officer finds the claimant has been paid all commissions/wages due.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the balance of his claim for unpaid commissions/wages.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his 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 his 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 he is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 I requires that an employer pay all commissions/wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed commissions/wages, it is hereby ruled that this portion of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: November 5, 2015

MJD/kdc