

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**DANIEL WEBSTER COLLEGE**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:42 III unpaid bonus  
RSA 275:44 IV liquidated damages

**Employer:** Daniel Webster College, 13000 North Meridian Street, Carmel, IN 46032

**Date of Hearing:** April 12, 2016

**Case No.:** 49151

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on October 24, 2014. 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 March 11, 2016.

The claimant opened the hearing and stated that the time frame of the period for the bonus payment was from January 12, 2012 to May 14, 2014. The total due in bonus payments amounted to \$42,291.67 and with the request for liquidated damages made the total of the Wage Claim, \$84,583.34.

The claimant testified that he received an offer letter from the employer on December 19, 2011. The claimant testified that he started his employment on January 9, 2012, and was terminated from his position on May 29, 2014. The termination was due to a staff reduction.

The claimant testified that he was hired as a Vice-President for Academic Affairs and that he was an Interim Dean for a year and a half. He testified that his offer letter does not mention the fact that any bonus had a vesting period of three years. The claimant testified that when he asked questions about the issuing of the annual equity award of the employer, he was always told that the money was not available at the time. The claimant testified that in his experience in higher education, bonus payments are often paid late.

The claimant further testified that, relative to policies and practice on bonus awards, the offer letter was the only written policy he had received. The claimant testified that he was not

aware of any policy addressing the vesting process. There was, however, a Performance Planning and Evaluation process in which he participated.

The claimant testified that on May 30, 2014 he received the first mention of the fact that the offer letter was referring to a Restricted Stock Award and that award had a three year vesting component. The original offer letter stated that there was to be an equity award and that the amount of \$17,500.00 was a yearly target. The claimant testified that the offer letter did say that the actual amount of any award was to be determined by the employer.

The claimant feels that he is entitled to the equity award of \$17,500.00 for each year of his employment and that the yearly award should be prorated for the months worked into the third year. The claimant also feels that the employer was willful and did not have good cause for their actions in not paying out the equity award and trying to justify the non-payment by issuing language that changes the award to a Restricted Stock Award with a three year vesting period. The claimant is seeking liquidated damages in the Wage Claim.

The employer testified that the offer letter was not a promise for a bonus. The employer testified that the claimant was eligible for the bonus, but it was never a guarantee. The employer also pointed out that the amount was a goal only and that the final amount was to be determined by the employer.

The employer stated that their position was to have an employee sign an agreement for bonus payments and the claimant was never offered a bonus payment because he did not fulfill the vesting requirement of three years of employment.

The employer offered another employee's offer letter that explained the bonus being a Restricted Stock Award and that it was the same as the equity award cited in the claimant's offer letter. The employer believes that the claimant was not entitled to any awards because while the claimant was eligible for the bonus, it was never a guarantee. They also stated that the claimant was not on a prepared list for an Equity Award that would have been reviewed by the Board of Directors at their first meeting of the year.

The employer also stated that they were following their written policy and procedures and that there should be no award of liquidated damages.

### **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.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:42 III The term "wages" means compensation, including hourly health and welfare, and pension fund contributions required pursuant to a health and welfare trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement

adopted for the benefit of an employee and agreed to by his employer, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

This part of the law places an issue such as a bonus/award into the category of wages when the bonus/award is due and owing.

RSA 275:44 IV If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

This part of the law allows for a claimant to seek liquidated damages up to the amount of the Wage Claim when the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

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 failed to meet this burden.

While the testimony of the parties demonstrates that the employer perhaps could/should have been clearer in explaining the precise parameters of the bonus structure, both parties were clear in offering testimony and evidence that the bonus award was discretionary, with the employer having the right/obligation to determine the award, if any.

The Hearing Officer finds that the offer letter clearly cited the amount of \$17,500.00 as an annual goal for the award. The Hearing officer also finds, however, that the offer letter was clear in stating that the award was discretionary, with the employer making the ultimate determination of the award to be offered. Accordingly the Hearing Officer finds that the Wage Claim is invalid as the claimant has not established that there were wages due.

The Hearing Officer also finds the request for liquidated damages to be invalid because as there is no finding that wages were unpaid and/or paid late, there is no finding of improper action at the level of willfulness or without good cause.

The Wage Claim is invalid.

### **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 Hearing Officer finds that 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: May 9, 2016

Original:      Claimant  
cc:            Employer

TFH/aph