

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

V

Concord Food Cooperative Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:44 IV liquidated damages

Employer: Concord Food Cooperative Inc., 24 S Main St, Concord, NH 03301

Date of Hearing: November 1, 2016

Case No.: 51652

BACKGROUND AND STATEMENT OF THE ISSUES

This claim was remanded from Superior Court for a finding on liquidated damages for monies awarded by the Court under a contractual agreement between the parties, from the original due date (September 2015). The Department of Labor's underlying decision found these same monies were not wages, therefore not under the jurisdiction of this Department and not subject to liquidated damages.

The claimant's representative asserts the employer is liable for liquidated damages on the contractual award by the Court of \$1,730.77, as the employer failed to pay these monies within the requirements of RSA 275:44 IV.

The claimant appeared at the hearing; however, she offered no testimony on her own behalf.

The employer denies they should be liable for liquidated damages as they did not believe any monies were due to the claimant, relying on advice from counsel and RSA 275:43-b itself. There was no willful act in the failure to pay the monies which were later awarded by the court.

FINDINGS OF FACT

Both parties agree the claimant did not perform any work for the pay period of September 13, 2015 through September 19, 2015.

The Court awarded the claimant \$1,730.77 because the employer was "contractually bound to pay Harris her salary during her involuntary leave, and that the hearing examiner erred as a matter of law by ruling otherwise."

The Court did not find that the contractual award was defined as wages under the jurisdiction of the Department of Labor

RSA 275:43-b states that a salaried employee shall receive their full salary for any pay period in which such employee performs any work (emphasis added) without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary during any pay period in which such employee performs no work.

RSA 275:42 III defines the term "wages" as 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.

The claimant did not perform any labor or render any services. As such, any payment per the contract would not fall under the definition of wages, even though the Court awarded this payment as contractually due.

Therefore, the Hearing Officer finds the claimant failed to prove the monies awarded by the Court were wages.

As no wages were found to be due, no liquidated damages can be assessed.

Even if the monies awarded by the Court were considered wages, the claim for liquidated damages would have failed.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The employer provided credible testimony that they relied on the advice of counsel when they decided to place the claimant on unpaid administrative leave.

The Hearing Officer would have found that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay her all wages due in the time required because the employer had a genuine belief that the wages were not owed.

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.

Based on the testimony and evidence presented, the Hearing Officer finds the claimant failed to meet her burden in this claim.

The claimant's witness attempted to argue that the claim was remanded by the Superior Court for liquidated damages determination because the employer had not paid the monies awarded by the Superior Court in a timely manner from the date of the Court's award. However, the Superior Court remand was specific to the issue of whether liquidated damages were due on the monies awarded by the Superior Court as of their original due date, which was a reversal of the Department of Labor's underlying decision, not the failure to pay the Court's award timely.

DECISION

Based on the testimony and evidence presented, as RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: November 9, 2016

MJD/das