

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



**V**

**Singer Subaru LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/bonus/commissions

**Employer:** Singer Subaru LLC, 5 Abbey Rd, Atkinson, NH 03811

**Date of Hearing:** February 11, 2016

**Case No.:** 51743

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$1,148.12 in unpaid bonus/commissions, after his \$2,000 monthly draw is subtracted from his total unpaid bonus/commissions.

The employer denies the claimant is due the claimed bonus under the written policy.

**FINDINGS OF FACT**

The claimant argues that he is due a balance of \$1,148.12 in unpaid bonus/commission upon his separation from employment.

The claimant tendered his resignation with a two week notice on September 28, 2015. His manager, Jeffrey Diener declined the two week notice and released the claimant from employment on that day. Later that day, Mr. Diener notified the employer, who directed Mr. Diener to contact the claimant to tell him that he wanted the claimant to stay for the offered two week notice. Mr. Diener immediately did as instructed and the claimant declined, stating he had already notified his new employer that he would begin working on Thursday, October 1, 2015. The claimant dropped off his demo car and keys on September 29, 2015.

The employer argues the claimant is not due any bonus under the written pay plan he signed.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including bonus, 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 properly noticed the claimant of his rate of pay and the policies and practices of the bonus program. The written policy reads, in relevant part, "Monthly Bonus: Any employee (with a bonus plan) must be employed for the entire month to earn a monthly bonus."

The claimant admitted he was familiar with this provision of the policy. He argues it should not apply because he offered a two week notice which would have kept him employed through the end of the month, but the employer declined the notice. When they asked him to work the notice, he was unable to do so because of his commitment to his new employer.

The claimant's argument is not persuasive in light of the written policy of the employer. The policy states unambiguously that the claimant must be employed for the entire month to earn the bonus. The claimant left employment on September 28, 2015.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed bonus under the written policy of the employer.

### **DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages/bonus 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/bonus, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: February 16, 2016

Original: Claimant  
cc: Employer

MJD/aph