

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

TEGRA EQUIPMENT INC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid commissions

Employer: Tegra Equipment Inc, 9 Dover Rd, Chichester, NH 03258

Date of Hearing: December 22, 2015

Case No. 51805

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 4, 2015. 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 December 2, 2015. Both parties were granted telephonic presentations for the hearing.

The claimant testified that he worked for the employer for two years. His wage package was based on a salary plus commissions. The claimant further testified that he did not sign a "non-compete" agreement with the employer.

The claimant stated that he went in on his last day to give a two week notice but because he felt the employer would not allow him to work the notice period, he had arranged for someone to pick him up from work.

The claimant also stated that he was due commissions for sales completed prior to his severing of his employment relationship. He did receive a message from his employer that there were commissions due but it was felt that he transferred an account to a competitor and this cost more than the commissions. The claimant did say that he went to work for a competitor.

The employer testified that there was not a non-compete agreement with the claimant.

The employer did not accept his two week notice and the claimant had someone pick him up on the day of his notice before the president arrived for work. The employer maintains that the claimant did not perform any work on his last day of work and the two week notice was not accepted so the claimant left voluntarily.

The employer did state that they withheld commissions from three sales that amounted to \$300.00. The reason for withholding these commissions was that the claimant transferred an account to a competitor and this cost the employer more than the amount of the commissions due.

FINDINGS OF FACT

RSA 275:43 I Weekly. 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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

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.

This section of the law also places commissions into the category of wages when the commissions are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and he did meet part of his burden in the claim.

The issue of wages for a salaried employer who works a part of an established pay period is not valid. The claimant did not show that he performed any work in the last pay period and the evidence and testimony show that the claimant left his position voluntarily. The claimant did submit a two week notice that was not accepted by the employer. In New Hampshire the law shows that an employer can let an employee go at any time and the employee can leave at any time. The Hearing Officer finds that the claimant left before any

work was done at the start of the pay period. The claimant also made arrangements for a ride from the work site in anticipation of being let go without performing work in the notice period.

Both parties agreed that there was no "non-compete" agreement in place. The claimant had the right to go to any employer that he desired to apply for work. In this case that is what happened.

The claimant was seeking to be paid commissions that had been earned. He estimated the amount in the Wage Claim. The employer confirmed that there was \$300.00 withheld in commissions because of the loss of a sale to a competitor. The claimant was credible in his testimony that he never sent any sale to a competitor and that the commissions in question had already been earned.

The absence of any agreement for an employee not to go to a competitor does not allow for an employer to withhold commissions (wages) earned. If there was a proven violation of any business ethics it does not enter into a Wage Claim.

The Wage Claim for the payment of salary is invalid.

The Wage Claim for commissions is valid in the amount of \$300.00.

DECISION and ORDER

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 proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$300.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$300.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 8, 2016

TFH/slh