

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ALL STAR DRIVER EDUCATION

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses
RSA 275:44 IV liquidated damages

Employer: All Star Driver Education, 75 Aprill Drive, Ann Arbor, MI 48103

Date of Hearing: May 10, 2016 (Held open until May 20, 2016 for written closings)

Case No.: 52156

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on January 14, 2016. 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 April 11, 2016. The hearing was held on May 10, 2016 and there was written closings requested by May 20, 2016.

The claimant testified that he started to work for the employer around March 2014. The claimant testified that at the start of his employment he was told that expenses did not have to be approved by the President. The claimant further testified that over a period of nineteen months he was receiving expenses for various projects outside of his instruction time and driving time. The claimant stated that he was hired under two rates of pay. He received \$25.00 per hour for his instruction and driving time. He was then paid a rate of \$10.00 for administrative time.

The claimant testified that his Wage Claim was for expenses incurred over a period of time. When the claimant started to work for the employer, he was doing many functions for the employer and was paid at the rates designated in his hiring agreement. The claimant would submit his expenses to the Vice President and they were paid. The claimant testified that he would perform functions related to recruitment information and bringing on new students to the program. Although there were program templates available from the employer, the claimant testified that they were hard to access and difficult to fit into the New Hampshire market.

The claimant also testified that he was aware of the employee handbook and the contents of said in handbook. However, he never signed for the receipt of the handbook

because after conversations with co-workers it was pointed out that the handbook had very little to do with the New Hampshire operation. Other employees said that they did not sign for the handbook. The claimant testified that he brought up the differences between the handbook and the way the office practices happened in New Hampshire, and he was told that it was being reviewed.

The claimant testified that he continued to work as he had at the start of his employment until the home office brought it to his attention that he was making far more than other employees throughout the states in which the employer operated. The claimant testified that he always submitted his expenses to the Vice President for approval; he did not know that the approval process was only through the President.

The claimant submitted his resignation after his classroom duties were fulfilled. He testified that it was up to the employer to staff the remaining driving time hours. The claimant feels that the employer held this against him because he was the last employee left in New Hampshire.

The claimant testified that he is due \$2,752.88 in unpaid expenses and he is also seeking \$432.10 in liquidated damages for a check that was paid late.

The employer testified that they have paid all classroom and behind the wheel training time. It is their feeling that the claimant is seeking extra pay for assignments not approved by the President as is required by the company policy. The employer testified that the claimant failed to sign the employee handbook because he did not feel that it dealt with policies and procedures that were unique to New Hampshire. The employer maintains that the policy was known to the claimant even if he refused to sign the document.

The employer admitted that the expense submissions by the claimant were paid for some time until a review showed that the employee had submitted expenses significantly exceeding any other nationwide employee. The employer made it clear that the Vice-President who signed off on the expenses did not have any power to approve the submitted expenses. The claimant was allowed certain vehicle travel that was for him only. It was a benefit to the claimant extended by the company. The claimant was also aware of the wage structure and was paid for the actual classroom and driving parts of the program.

The employer testified that the claimant often wanted to go his own way and ignore programs available from the home office. The testimony that shows there were problems with the client connections with the home office were not to be dealt with by the claimant.

The employer did acknowledge that there were some expenses paid but when discovered that they were not submitted or incurred in accord with ordinary practice, the claimant was told not to do them again and use the products designed and distributed by the company. The claimant would not do this and as a result certain of the expenses were rejected.

The employer did mention that the claimant resigned without completing the entire program with the students. This left the employer in a difficult situation and the employer testified that they had to expend large amounts of money to correct and complete the program.

The employer testified that their position is that the company has paid all wages that were due and owing.

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 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as employee expenses into the category of wages when the expenses are 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 section 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 provided for the hearing, that the Wage Claim is valid in part and invalid in part.

In the issue of the claimant leaving his job before the classes were completed, this is not a factor. New Hampshire is an "at-will" state where an employee can leave the job at any time and an employer can let an employee go at any time.

There is also no finding in the request for liquidated damages. The claimant has to show that the employer was willful and did not have good cause for their action and this has to be a finding by the Hearing Officer. In this case there was enough happening near the end of the class year that the employer was not willful and did have good cause for their action. The burden to show the error of the employer was not established and so the request for liquidated damages is invalid.

The claimant prevails in the request for expenses. The claimant was credible in his testimony that he was filing expense reports timely. These reports were approved by the Vice-President and paid. There was no reason for the claimant to believe that he was not approved for expenses in the extra work he was doing. There was also no reason to believe that the Vice-President was not acting on behalf of the President. The claimant was credible in his testimony that any contact with the President was limited. The claimant was also credible in his testimony that he did not receive a notice from the President stopping his expense submissions. He continued to do some work and submitted the costs to the employer.

The Wage Claim is valid in the amount of \$2,752.88.

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 \$2,752.88.

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.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$2,752.88, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 10, 2016

Original: Claimant
cc: Employer

TFH/aph