

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

AKA TOOL

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal deductions from wages

Employer: AKA Tool Inc., 477 Province Road, Laconia, NH 03246

Date of Hearing: April 14, 2016

Case No.: 52345

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on February 22, 2016. The notice was sent to the employer and there was no written objection to the claim. The Notice of Hearing was sent to both parties on March 25, 2016. Both parties did show up for the hearing.

The claimant testified that he worked for the employer for three and a half years and was an hourly employee. The claimant testified that there was no hiring agreement in writing; additionally the claimant testified that the employer had no written policies and procedures in place concerning pay or benefits.

The claimant testified that he shared a part of the premium with the employer for his health insurance. The employer paid \$325.00, ten days in advance, for the premium. When the claimant was terminated, the employer deducted \$325.00 from his wages to offset the share the employer had paid.

The employer testified that the claimant was fired from his position; the company did pay for leave time beyond time earned. However, this is not a part of this Wage Claim. The employer did testify that the company had an agreement with the employee to pay 60% of the monthly insurance premium and the employee was responsible for the other 40%.

The employer felt that because the claimant was terminated before the insurance coverage ended, they were entitled to get the overpayment back from the claimant.

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 275:48: I illegal deductions from wages. No employer may withhold or divert any portion of an employee's wages unless: (a) The employer is required or empowered to do so by state or federal law, including payroll taxes. (b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee.

This part of the law describes when and how wages can be withheld.

It is the finding of the Hearing Officer based on the written submission and the testimony of the parties that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The employer does not have any written policies about the overpayment of items such as leave time off or insurance payments. The employer is also bound by the law in regards as to when wages can be deducted or withheld.

In this case the claimant did not put in writing items that could lead to the withholding of wages. There was a formula in place that dictated the amount to be paid by the employer and the amount to be paid by the claimant. The claimant authorized these deductions. The claimant did not authorize any deductions in addition to this, and as a result, the Wage Claim is valid in the amount of \$325.00.

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 Department finds that the claimant proved that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$325.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$325.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: May 4, 2016
Original: Claimant
cc: Employer
TFH/aph