

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Nashua Sports Academy LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages and commissions
RSA 275:43-b unpaid salary

Employer: Nashua Sports Academy LLC, 90 Northwest Blvd, Nashua
NH 03063

Date of Hearing: May 16, 2016

Case No.: 52498

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$8,000 in unpaid commissions and \$1,000 for an unpaid stipend for coaching a baseball team. He argues the employer changed his commission verbally on two occasions, the first cutting his commission in half and the second removing all commissions. The employer failed to put any changes to his commission structure in writing, as required by law. He further argues the employer failed to pay a \$1,000 stipend for coaching a baseball team.

The employer denies the claimant is due any commissions or stipend. He argues the claimant ceased recording commissions for payment, therefore, none were paid. The claimant did record commissions for his trainings provided by and paid to other employees. He also argues the agreement regarding the stipend had been a verbal agreement, which also included requirements to finish out the baseball season and that the hours for coaching this team were outside his regular employment hours. The claimant left employment prior to the end of the baseball season and recorded most of his coaching hours during his regular employment time.

FINDINGS OF FACT

The parties tell vastly different stories regarding commissions.

The claimant argues he had two private meetings with Mr. Hart, the first during which Mr. Hart cut the claimant's commission in half. The second meeting Mr. Hart removed any commission payments to the claimant. None of these discussions were reduced to writing. The claimant vehemently argues the employer did not comply with

RSA 275:49 and Lab 803.03 to reduce any changes in pay to writing, prior to the change effective date, therefore the commissions are due.

The employer argues the claimant did not record any commissions of his own on his records for pay, however, he did record commissions to be paid to other employees for his training.

RSA 275:49 I and II require that an employer inform employees of the rate of pay at the time of hire and upon any changes. 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 claimant bases his claim on the fact that the employer did not inform him of the changes in commission structure in writing.

The claimant admits the employer did provide a verbal notification of the alleged change in commission payment, on both occasions, prior to the changes being effective.

The employer argues the claimant did not submit any training for commission payments for himself.

Both arguments are persuasive, though the stories are different. Under either situation, the claimant failed to prove by a preponderance of the evidence he is due the claimed commissions.

The Hearing Officer finds that the employer was not in compliance with the requirements of Lab 803.03 (a) when they did not inform the claimant, in writing, of the reduction in commissions. The Hearing Officer also finds that this does not automatically guarantee the claimant his commissions retroactively. The claimant was informed, verbally, that the commission structure changed. The claimant knew that he would not be receiving his previous commission structure. The claimant, therefore, fails to prove by a preponderance of the evidence that he should now be retroactively paid his commissions at his former commission structure.

Similarly, if no commissioned work was performed, no commissions would be owed and no commissions are found to be due.

The claimant further argues he is due a \$1,000 stipend for coaching a baseball team.

The parties agree that no written documentation exists for this stipend, as required by RSA 275:49 and Lab 803.03.

The employer credibly argues the verbal discussion regarding the payment of a stipend for coaching the baseball team was contingent upon the claimant completing the baseball season and that any hours for coaching this team were outside his regular employment hours. As the claimant left employment prior to the end of the baseball season and recorded most of his coaching hours during his regular employment time, he is not due any payment for this stipend.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed stipend as did not complete the baseball season and did not coach the baseball team outside of his regularly scheduled hours.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his 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.

The Hearing Officer finds the claimant failed to meet his burden in this claim.

DECISION

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 failed to prove by a preponderance of the evidence that he is owed the claimed commissions/stipend/wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 2, 2016

Original: Claimant
cc: Employer

MJD/aph