

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



**V**

**Profile Motors Inc**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Profile Motors Inc, PO Box 2220, Conway NH 03818

**Date of Hearing:** June 13, 2016

**Case No.:** 52699

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$400 in unpaid salary. She provided a notice of her intent to resign with a two week notice to the employer who terminated her employment. They prorated her salary to the one day she worked during the pay period.

She also argues she is due \$3,100 in unpaid commissions that she would have earned had she not been assisting in other areas of the business, as the employer's request.

The employer agrees she is due the claimed \$400 in unpaid salary and will forward a check to this Department.

The employer disagrees that she is due any commissions under her written pay plan.

The hearing was left open until 4:30pm on June 27, 2016, for the employer to submit a check for the \$400 claimed salary. The employer failed to remit the payment to this Department.

**FINDINGS OF FACT**

The claimant worked for the employer from October 6, 2015 through April 4, 2016, as a salaried Service Advisor.

The claimant argues she was required to assist other areas of the employer and was not able to make the commissions in her regular position, nor was she paid the commissions normally paid to the positions she was covering in other departments.

The employer argues they properly notified the claimant of her compensation package in writing, and paid her accordingly, therefore, no further wages are due. They did not notify her that her compensation package would change while assisting in other areas of the company.

RSA 275:49 I requires that an employer inform employees of the rate of pay 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 notified the claimant of her rate of pay and commission compensation package. She received all wages and commissions earned under that pay plan.

The employer did not notify the claimant, verbally or in writing, that she would receive a different compensation plan for her assistance in other areas of the company.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed commissions/wages.

The claimant provided the employer with a two week notice when she resigned her position on April 4, 2016. The employer asked her to leave immediately.

The employer paid the claimant for one day of the pay period only. She seeks the remaining four days, or \$400, as due.

The employer agreed to remit payment for the \$400 at the hearing. They did not remit payment to the Department, as agreed.

RSA 275:43-b requires that an employer pay a salaried employee their full salary for any pay period in which the employee performs any work. It also allows employers to make deductions to a salaried employee's wages under certain circumstances, but none of those exceptions apply to the facts of this case.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed salary in the amount of \$400.

### **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 failed to prove by a preponderance of the evidence that she is owed the claimed commissions/wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$400.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$400, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: June 30, 2016

Original:        Claimant  
cc:                Employer

MJD/aph