

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



**V**

**Kamazu US Inc**

**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:** Kamazu US Inc, 40 Audia Ct, Concord ON L4K3N4

**Date of Hearing:** August 3, 2016

**Case No.:** 52732

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$1,976.77 for one week of unpaid salary and \$5,206.71 in unpaid employee expenses for October and November 2015. He further seeks liquidated damages.

The employer denies the claimant was not paid for all time worked. Further, they allege they verbally notified the claimant he would not receive any reimbursement for employee expenses after September 2015.

The employer also argues the claimant began receiving wage payments in advance of working the pay period beginning in February 2012, which covers any wages due.

**FINDINGS OF FACT**

The employer terminated the claimant's employment on November 30, 2015. The claimant had completed one week of the biweekly pay period upon termination. His regular biweekly salary was \$3,953.54.

The claimant seeks payment for the one week he worked during the pay period ending December 6, 2015.

The employer argues the claimant had been receiving payment for wages in advance of the work being performed beginning February 2012, and therefore had already received wages for the week he is seeking.

The employer previously submitted paystubs from February 2012 and December 2015, which both show the payment of wages occurring after the pay period had been worked, not in advance.

The employer's argument that the claimant received wages in advance of the work performed is not persuasive in light of the evidence presented.

RSA 275:43-b requires an employer to pay a salaried employee their full salary for any pay period in which they perform any work. An employer may prorate an employee's salary to a daily basis if they are terminated for cause.

The employer did not argue the claimant's termination was for cause.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the full salary for the biweekly pay period in the amount of \$3,953.54.

The claimant argues he is due \$5,206.71 in unpaid employee expenses, \$2,112.39 for October 2015 and \$3,094.32 for November 2015. He denies any conversations with the employer advising no further employee expense reimbursements would be paid.

The employer argues they verbally notified the claimant during several telephone conferences in August and September 2015 that they were no longer going to pay employee expenses as they were too high and contained unauthorized purchases.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding employee expenses. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer failed to notify the claimant in writing of the discontinuation of payments of employee expenses. He did not provide persuasive testimony or evidence that the claimant had verbal notification of this change.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed employee expenses in the amount of \$5,206.71.

The claimant asserts the employer should be liable for liquidated damages.

The employer argues persuasively that he held a genuine belief that the claimant was not due any further wages.

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" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean,

"voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due in the time required because the employer had a genuine belief that the salary and employee expenses were not owed.

### **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 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 he was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$3,953.54.

As RSA 275:43 V considers the payment of employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that he was not paid all employee expenses due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$5,206.71.

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 timeframe 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 timeframe required by statute, it is hereby ruled that this portion of the wage claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$9,160.25 (\$3,953.54 + \$5,206.71), 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: August 15, 2016

Original: Claimant  
cc: Employer

MJD/aph