

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Advantage Business Media LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:44 IV liquidated damages

Employer: Advantage Business Media LLC, 100 Enterprise Dr Ste 600, Box 912, Rockaway NJ 07866

Date of Hearing: July 25, 2016

Case No.: 52853

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$2,437.50 for her final pay period, commissions of an undetermined amount, and \$375.94 in unpaid employees expenses. She further sought liquidated damages.

The claimant received payment for the final salary, commissions and expenses prior to the hearing. She chose to continue to seek liquidated damages.

The employer denies the actions were willful. She was not aware of the requirements of RSA 275:43-b, and upon notification from the claimant, sought advice from counsel. Counsel advised payment of the full pay period, and they sent the payment for the unpaid salary to this Department, who forwarded to the claimant.

The commissions and expenses were paid upon the regular payout schedule.

She was not aware of the requirements of RSA 275:44 IV, as they had few employees in New Hampshire.

FINDINGS OF FACT

The claimant worked for the employer for almost twenty years when she was laid off due to economic reasons on April 18, 2016.

The claimant argues the employer should be liable for liquidated damages as the employer initially failed to pay her salary in full. She informed the employer on May 6,

2016, that she should have been paid in full for her final pay period, not just the one day physically worked for which she received payment.

The employer advised she would need to speak with counsel, which she did. On May 11, 2016, the employer received advice from counsel the whole pay period would need to be paid. Ms. Foulds notified the claimant via voicemail that the check would be sent to her, and that she could expect payment of commissions and employee expenses according to the regular schedule.

The claimant filed a claim for these wages on May 16, 2016.

The employer produced a check for the balance of her salary on May 25, 2016, on the next regular pay scheduled. This Department received the check on May 31, 2016, pursuant to the claimant's request to send the check here.

The claimant received her commission check on the regular commission schedule.

The claimant received her employee expenses in compliance with RSA 275:57 I.

The parties did not discuss RSA 275:44 IV.

The claimant admitted she did not know if the employer was aware of the requirements of RSA 275:44 IV or not.

The employer provided credible and persuasive testimony that there was no intention to delay the claimant's wages. Further, any delay was not done willfully or knowingly.

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 her all wages due in the time required because the employer had a genuine belief that initially the salary had been paid in full, and that paying all wages (including salary, commissions and employee expenses) due pursuant to the regular pay schedule was permissible.

DECISION

Based on the testimony and evidence presented, 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 Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 9, 2016

Original: Claimant
cc: Employer

MJD/aph