

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Monadnock Regional School District

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:43 V unpaid severance pay
RSA 275:43 V unpaid employee expenses

Employer: Monadnock Regional School District, 600 Old Homestead Hwy,
Swanzey NH 03446

Date of Hearing: August 8, 2016

Case No.: 52984

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed unpaid salary in an undisclosed amount, \$2,197.92 in unpaid severance pay, and \$148.00 in unpaid employee expenses.

At the hearing, the claimant determined he was due \$2,197.92 for his final pay period in which he received no pay. He also agreed he had received the claimed \$148.00 for unpaid employee expenses.

The employer agrees the claimant earned the claimed salary and that they did agree to pay a two week severance upon his separation. However, they argue that due to overpayments to the claimant throughout the school year, he has already received more than the amounts claimed; therefore, no further wages are due.

FINDINGS OF FACT

The claimant worked for the employer from July 20, 2015 through May 20, 2016, when the employer laid him off.

The claimant worked from May 15 through May 20, 2016, the first week of a biweekly pay period. He received no payment from the employer for this pay period. He seeks his full salary of \$2,197.92.

The employer agrees that he earned the claimed \$2,197.92 in salary for the pay period of May 15 through May 28, 2016. However, due to a recalculation of his

annualized salary, which was done in error, the claimant received a higher biweekly salary than he should have for a period of time.

The employer calculated the claimant's salary on an annual basis, divided out the number of days worked, and determined the claimant had been overpaid per day, for the number of days worked. He received an overpayment of more than the claimed salary. They seek to use that overpayment to offset the claimed salary.

RSA 275:48 I (d)(4) allows recovery from an employee for an accidental overpayment when the following conditions are met:

- (A) The recovery is agreed to in writing.
- (B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.
- (C) The written agreement specifies:
 - (i) The date the recovery of the overpayment will begin and end.
 - (ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in any pay period.
 - (iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

The employer did not meet any of the conditions in the statute to recover an accidental overpayment from the claimant. The employer is precluded from using an offset from an accidental overpayment for wages due.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed salary in the amount of \$2,197.92.

The claimant also argues the employer promised to pay him a two week severance due to his layoff.

The employer agrees that they agreed to provide a two week severance because he was being laid off. However, because he received an overpayment of more than the claimed salary and severance pay, they argue he is not due any severance pay.

The New Hampshire Supreme Court concluded that severance benefits offered to a few employees on individually negotiated terms did not meet the definition of wages and RSA 275:42 III and RSA 275:43 III (now RSA 275:43 V).

Because of this conclusion, the Hearing Officer finds that the severance pay offered to the claimant was not "wages" and, therefore, is not within the scope of jurisdiction of a Wage Claim.

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 \$2,197.92.

As RSA 275:43 V severance vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any severance pay, 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 \$2,197.92, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 15, 2016

Original: Claimant
cc: Employer

MJD/aph