

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

[REDACTED]

**V**

**Coos County**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:44 IV liquidated damages

**Employer:** Coos County, PO Box 10, W Stewartstown, NH 03597

**Date of Hearing:** August 31, 2016

**Case No.:** 53080

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts the employers should be held liable for liquidated damages because he provided more than one pay periods notice of his intent to retire and the employer failed to pay his final wages within seventy-two hours.

Though the employer now admits the claimant met the criteria in RSA 275:44 II, they held a genuine belief that the payment of wages could be delayed with mutual consent of the employee. Further, the employer argues they made an exception to their practice of providing final payment via live check, and provided the final payment to the claimant via direct deposit. Because of the timing of the final instructions received by the claimant to direct deposit his final wages to multiple accounts, it would not have been possible to provide payment within seventy-two hours because of the banking processes.

Also, the past and present policy has been to pay retiring employees on the next regular pay day.

They deny any willful intent or bad faith in delivering his wages on the next regular pay day.

**FINDINGS OF FACT**

The claimant worked for the employer from August 9, 1992 until he tendered his retirement via letter dated May 20, 2016. His letter indicated his last day of work would be June 3, 2016, and it was the final shift worked. He received his final pay wages via direct deposit on June 9, 2016. His retirement date with the New Hampshire Retirement System was July 1, 2016.

The employer has a weekly payroll with a pay week of Sunday to Saturday, with pay day the following Thursday.

There is no dispute the claimant provided greater than one pay period's notice of his intention to retire.

The claimant now contends that because the employer did not pay all of his wages due upon his retirement within seventy-two hours of his final shift, that they should be liable for liquidated damages.

The employer maintains they did not willfully and without good cause fail to pay his final wages within seventy-two hours of his final shift. The regular policy and practice for twenty-six years has been to pay final wages to retiring employees on the next regular pay day, regardless of the amount of notice time they had provided. They will be changing their policy and practice as a result of this claim.

The claimant had requested a change to the regular process of providing a live check for final wages by asking for direct deposit because his banks of choice were not local. Providing direct deposits rather than a live check requires additional processing by the bank, and in this case, banks, receiving the funds.

The claimant argues pursuant to *Harold Whitehouse v Rockingham County*, DOL Decision 47978 (May 14, 2015), the County should be held liable for liquidated damages.

The instant wage claim is distinguishable from *Harold Whitehouse v Rockingham County*, DOL Decision 47978 (May 14, 2015) because Mr. Whitehouse specifically informed his employer of the requirements of RSA 275:44 II. Mr. Morann made no representations of RSA 275:44 II to his employer.

The claimant's argument that a Rockingham County Commissioner made a public statement that Mr. Whitehouse's valid decision should be a warning to all employers, is not persuasive.

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 they could pay the wages on the next regular pay day.

### **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.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: September 14, 2016

Original: Claimant  
cc: Employer  
Employer's Attorney

MJD/das