

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Robert Frost Charter School of NH

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:44 IV liquidated damages

Employer: Robert Frost Charter School of NH, PO Box 967, N Conway, NH 03860

Date of Hearing: September 26, 2016

Case No.: 53237

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$533.62 for the balance of her unpaid salary for the pay period ending May 8, 2016, and \$771.94 in unpaid salary for the pay period ending May 15, 2016. She further seeks liquidated damages.

The employer denied, through the filing of their written objection, that the claimant is due any further salary or liquidated damages. They argue, through their attorney, that the claimant was paid for all days worked in pay period ending May 8, 2016, and that she did not perform any work for pay period ending May 15, 2016. They further argue that they are allowed to make deductions from a salaried employee's wages pursuant to RSA 275:43-b I (e).

The employer did not appear at the scheduled hearing, instead sending only counsel.

FINDINGS OF FACT

The claimant worked for the employer as a salaried employee between August 2014 and May 2016. She received a regular weekly net salary of \$771.94, and gross of \$897.73 for the period relevant to this claim.

The claimant sent a notice of resignation to the employer via email on May 2, 2016, stating her last day of employment would be Friday, May 13, 2016.

For the week ending May 8, 2016, the claimant received gross wages of \$258.06, documentation previously submitted, for 11.5 hours at an hourly rate of \$22.44. The claimant seeks the difference of \$533.62 net, or \$639.67 gross.

The employer deducted sick days and personal days used by the claimant, which she had not earned, and changed the claimant to an hourly rate for the week ending May 8, 2016. Through their attorney, they argue these deductions are allowable under RSA 275:43-b I (e).

Both parties agree the claimant performed work during the week ending May 8, 2016.

RSA 275:43-b Payment of Salaried Employees. –

I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

(e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

The claimant provided credible testimony that she did not request any time off without pay, nor did she authorize any deductions from her wages.

The employer did not produce any documentation nor did they send a representative to provide credible testimony to refute that of the claimant or to show that the claimant did request time off without pay.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the balance of her regular salary for the week ending May 8, 2016, in the amount of \$533.62 net.

The claimant seeks her full regular salary for the week ending May 15, 2016. She argues though she did not perform her duties in the classroom, she did update the school's website to assist with the transition for the next teacher.

The employer argues, through their attorney, that the claimant did not perform any work during the week ending May 15, 2016; therefore, she is not due any wages. They previously submitted an email dated September 20, 2016, from the web support area of the Montessori school website, stating the claimant had not logged in to the program since April 15, 2016.

The claimant credibly and persuasively testified that she remained logged in to the program and did not log out on a daily basis. Further, she was required to complete the attendance of her class daily on the website, and did complete that task daily until her last day in the classroom of May 6, 2016.

The Montessori web support email of September 20, 2016, is not found to be persuasive evidence that the claimant did not perform work on the school's website during the pay period ending May 15, 2016. The email simply stated she had last logged on April 15, 2016. The email made no mention of whether any updates had been added to the site since that date nor that it was impossible that the claimant could continue to add data to the site without showing a log in since April 15, 2016.

The employer did not produce any documentation nor did they send a representative to provide credible testimony to refute that of the claimant or to show that the claimant could not have updated the school website during the pay period ending May 15, 2016.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence that she did perform work and she is due her regular salary for the week ending May 15, 2016, in the amount of \$771.94 net.

The claimant seeks liquidated damages on the unpaid salary for the pay periods ending May 8, 2016 and May 15, 2016.

The claimant had conversations with the employer regarding how much vacation/personal/sick time she was allotted, prior to her separation from employment. She admitted there seemed to be confusion amongst the parties as to if there was a certain allotment of time, how much the allotments might be, and whether the claimant had exceeded those allotments. The claimant never received any concrete answers to her questions.

The claimant also expressed her angst with receiving a live check for the pay period ending May 8, 2016, with a pay day of May 13, 2016. She had automatic deductions from her bank account which did not process properly because she received a live check. As she had not performed any work during days preceding May 13, 2016, she was not at the employer's location to receive her paper check. When asked how she would like to receive her live check on May 14, 2016, she opted to have it mailed rather than picking it up at the employer's location. As such, she received the check on May 18, 2016, and for personal reasons did not cash the check until May 26, 2016.

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".

RSA 275:43 requires an employer to pay an employee all wages due on designated pay day. The employer met this requirement by having a live check available on May 13, 2016. The fact the claimant had chosen a different method of payment is noted, however, the employer did make the wages they believed were due available on the designated pay day. It is not the fault of the employer that the claimant did not appear to work that day and therefore did not receive the available wages. On May 14, 2016, the employer notified the claimant as soon as they realized she did not

receive the live check on May 13, 2016. The claimant opted for the check to be mailed rather than picking it up. The claimant then chose to hold the check for approximately eight days prior to cashing it, of her own accord.

The claimant has the burden to prove by a preponderance of the evidence that the employer voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed, fails to pay them.

The Hearing Officer finds the claimant failed to meet that burden as the employer did not act willfully in generating a live check on May 13, 2016, and they held a genuine belief that they had paid all wages due to the claimant.

DISCUSSION

The burden of proof lies with the claimant in these matters. The claimant has the burden to prove by a preponderance of the evidence that the claimed wages are due. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant met this burden in her claim for unpaid salary.

She did not meet this burden in her claim for liquidated damages.

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 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 \$1,305.56 (\$533.62 + \$771.94).

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 portion of the Wage Claim for liquidated damages is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,305.56 (\$533.62 + \$771.94), less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 12, 2016

Original: Claimant
cc: Employer
Attorney

MJD/das