

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SMITHS TUBULAR SYSTEMS

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal deductions

Employer: Smiths Tubular Systems, 93 Lexington Drive, NH 03246

Date of Hearing: September 19, 2016

Case No.: 53389

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 18, 2016. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on August 31, 2016.

The Wage Claim is for \$744.38 that was deducted from the last paycheck. The claimant testified that he was working under a written tuition plan with the employer. He feels that the courses he selected were beneficial to the employer and not of any use to him in future employment.

The claimant testified that he was working in a hostile environment and that the employer would not try to correct the situation(s). The claimant said that it was clear to him that he was on his way out of the company so he began to seek other employment. Upon finding a new job with a different company the claimant asked his employer to match the job offer if they wanted him to stay on. He also said that he would work a selected schedule because the new job would be his top priority.

The employer testified that the claimant not only resigned his position, but then abandoned his job before any date of finish. The employer further testified that the claimant was not terminated but took the action to quit and find a new job with his free will. The claimant gave the employer a letter of resignation and they accepted his letter. The employer also testified that the claimant never grieved the so-called hostile work environment through the established company grievance procedure.

The employer testified that they had a tuition reimbursement plan in place and the claimant participated in the plan. The tuition plan allows for any unpaid balance to be deducted from the participants last pay check. In this case the employer deducted \$744.38 of the \$5,220.00 owed. The amount held still gave the claimant minimum wage for the hours worked in his last pay period.

The claimant maintains that the courses he took were of benefit to the employer and does not help him on his career path. The employer did state that the Business Management courses the claimant was enrolled in were a benefit if he wished to advance in the company. It was also noted that the credits earned stay with the claimant.

FINDINGS OF FACT

RSA 275:43 I

I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:48 I

I. No employer may withhold or divert any portion of an employee's wages unless:

- (a) The employer is required or empowered to do so by state or federal law, including payroll taxes.
- (b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the

commissioner , as provided in subparagraph (d) or for any of the following:

- (1) Union dues;
- (2) Health, welfare pension, and apprenticeship fund contributions;
- (3) Voluntary contributions to charities;
- (4) Housing and utilities;
- (5) Payments into savings funds held by someone other than the employer;
- (6) Voluntary rental fees for non-required clothing;
- (7) Voluntary cleaning of uniforms and non-required clothing;
- (8) The employee's use of a vehicle under RSA 261:111, III;
- (9) Medical, surgical, hospital, and other group insurance benefits without financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded;
- (10) Required clothing not covered by the definition of uniform;
- (11) Legal plans and identity theft plans without financial advantage to the employer when the employee has given his or her written authorization and deductions are duly recorded; and
- (12) For any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded. The withholding shall not be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business. Nothing in this subparagraph shall prohibit a charitable organization from withholding from an employee's wages a voluntary contribution to such charitable organization.

(c) The deductions are pursuant to any rules or regulations for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books.

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

- (1) Voluntary contributions into cafeteria plans or flexible benefit plans, or both, as authorized by section 125 or section 132 of the Internal Revenue Code.
- (2) Voluntary payments by the employee for the following:
 - (A) Child care fees by a licensed child care provider.
 - (B) Parking fees.
 - (C) Pharmaceutical items, gift shop, and cafeteria items purchased on site of a hospital by hospital employee.
- (3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:
 - (A) The time the payments will begin and end.
 - (B) The amounts to be deducted.
 - (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
- (4) Voluntary payments for the recovery of accidental overpayment of wages 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.

(5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(6) Voluntary payments for the employee's use of a health or fitness facility that is sponsored by the employer for the benefit of its employees and that is located within the employer's facility or workplace, or operated by a private health and fitness facility that offers discounted memberships of 50 percent or more to all employees of the employer, as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(e) The employee requests in writing that deductions may be made for contributions to a political action committee from the employee's wages.

(f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

This is the part of the law that spells out when and how deductions can be made from an employee's wages.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant entered into a signed agreement with the employer for reimbursement of tuition for taking college courses. The courses had to be approved by the employer prior to authorization to take the classes under the reimbursement plan. The claimant, in agreeing to this program, agreed to pay the employer for their expenditures if they left the company. Any balance was to be deducted from the last pay check.

In this case, it is found that the claimant resigned from employment owing a balance on the tuition reimbursement agreement. The employer deducted the balance of the wages due after a payment of minimum wage for the hours worked. The amount deducted did not satisfy the outstanding loan but that issue is not a part of the Wage Claim.

The employer deducted an authorized payment from the claimant's wages. The claimant maintains the completed credits on his record.

The Wage Claim is invalid.

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 this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 11, 2016

Original: Claimant

cc: Employer

TFH/das