

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

County Telephone & Telegraph Co dba Oxford Networks

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: County Telephone & Telegraph Co dba Oxford Networks, 491 Lisbon St,
Lewiston, ME 04240

Date of Hearing: October 27, 2016

Case No.: 53611

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$843.84 in unpaid salary because the employer terminated her employment and did not pay her full salary for the pay period.

The employer argues they terminated the claimant for cause and therefore, per statute, can prorate her salary.

FINDINGS OF FACT

County Telephone & Telegraph Co dba Oxford Networks (the employer) acquired Bayring Communications, which the claimant had worked for prior to the acquisition.

The claimant worked as the human resource manager for Bayring Communications and upon acquisition by Oxford, her duties changed to include helping transition employees to the new company's payroll system and benefit programs.

During a meeting with Bayring employees and the employer's transition team on November 23, 2015, the claimant behaved poorly and aggravated the already high tensions between the former Bayring employees and the new employer. The employer notified the claimant that this behavior was unacceptable and further behavior of this nature would result in termination.

The employer held a training session in December 2015, in which the claimant again behaved poorly.

The employer immediately made the decision to terminate the claimant for her poor behavior. However, they had previously notified all employees that no layoffs

would occur until after the holidays and they waited until January 12, 2016, to meet with her.

At the January 12, 2016, meeting, the employer presented the claimant with a severance agreement, which both parties executed. The claimant received the full benefits outlined in the agreement. She further received additional monies to help offset the cost of COBRA benefits.

At no time did the employer notify the claimant that she was being terminated for cause.

The claimant had worked during the pay period beginning January 4, 2016 and through her separation date of January 12, 2016. She received payment for fifty-six hours, rather than the full bi-weekly salary.

The claimant argues she is due the balance of her salary, or \$843.84, for the pay period in which she separated from service.

The employer argues they terminated her for cause and can prorate her salary. Further, they argue the claimant signed a release in the severance agreement for all future claims.

Pursuant to RSA 275:50 Waiver Prohibited I. Except as provided in RSA 275:53, no provision of this subdivision may in any way be contravened or set aside by private agreement. Therefore, the release signed by the claimant is not valid in this jurisdiction.

RSA 275:43-b II permits an employer to prorate salary to a daily basis when a salaried employee "is terminated for cause by the employer".

The current standard for a "for cause" termination is established by Lakeshore Estates Associates LLC v Michael F. Walsh (Belknap Superior Court No. 06-E-259, April 4, 2007). The Decision sets the standard as, "articulated at 82 Am. Jur. 2D *Wrongful Discharge* § 183 (2003), which provides that an employer may dismiss an employee "for cause" if the employee engages in misconduct. An employee's misconduct must comprise reasonable grounds for termination, and the employee must have received notice, express or fairly implied, that such misconduct would be grounds for termination. 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003); see also *Lowell v U.S. Sav Bank*, 132 N.H. 719, 726 (1990) (an employer must offer an employee a proper reason for a "for cause" dismissal). In reviewing a "for cause" dismissal, "the fact finder must focus not on whether the employee actually committed misconduct, but rather on whether the employer reasonably determined it had cause to terminate." 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003)".

The employer had cause to terminate the claimant when she behaved poorly during the December 2015 training after being warned of impending termination after the November 23, 2015, meeting. However, the employer never notified the claimant that her termination was for cause.

Because the employer never notified the claimant she was being terminated for her poor behavior or for cause, the Hearing Officer finds that the employer did not

terminate the claimant for cause and therefore, must pay her full salary for the pay period in which she separated from employment.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed salary in the amount of \$843.84.

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.

The claimant raised the issue of RSA 275:44 IV, liquidated damages, in documentation submitted for the hearing.

This issue was not noticed for the hearing nor can issues be added without the consent of all parties. However, in the interest of expediency to all parties, the following information is provided.

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 claimant would have 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 employer presented credibly that they held a genuine belief that they had the right to terminate the claimant for cause, and therefore, prorate her salary.

As such, the claimant would fail to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay the wages due within the required timeframe.

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 the Wage Claim is valid in the amount of \$843.84.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$843.84, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: November 8, 2016

Original: Claimant
cc: Employer

MJD/das