

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ROCKINGHAM TOYOTA

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages and commissions

Employer: Rockingham Toyota, 412 So. Broadway, Salem, NH 03060

Date of Hearing: November 1, 2016

Case No.: 53870

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 2, 2016. The notice was sent to the employer and there was a written 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 October 11, 2016.

The claimant testified that he is seeking salary and commissions. The claimant said that he gave his notice and worked through the last day of the notice. He was asked to perform some work into the next pay period and feels that he is due a full pay period because he was a salaried employee. The claimant testified that he was requested by the employer to perform the additional work after the resignation went into effect.

The claimant also testified that he felt he was due commissions through July 19, 2016. The claimant said that he averaged \$4,500.00 over a year and a half and so he felt he was due around \$3,600.00.

The employer testified that they paid the claimant through his set date of resignation. At some time prior to the resignation date the employer asked the claimant if he would be available for a specific task after he resigned. The claimant agreed to perform the task on July 13, 2016. The employer said that they paid the claimant \$200.00 for the task that took about two hours. He was paid a full day's pay.

The employer testified that the claimant was paid for all commissions through his resignation date. At a certain point the employer decided to pay for any commissions through July 13, 2016 and they paid these commissions on November 1, 2016.

FINDINGS OF FACT

275:43 Weekly. –

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 part of the law mandates that the employer pay the employee all wages due at the time the wages are due and owing. Commissions are considered wages when due and owing.

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:

- (a) Any pay period in which such employee performs no work.
- (b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.
- (c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.
- (d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.
- (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.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This part of the law governs the payment of a salaried employee.

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 employer provided credible testimony that they asked the claimant to provide one service after his resignation. It is found that the claimant could have rejected the request because it was after his official resignation date. The employer paid the claimant a set amount for the project and it was over.

The employer was also credible in the position that they paid all commissions through July 13, 2016. The claimant was giving an estimate over the course of his employment and did not present any evidence that the commissions were not paid. There was a question about the timing of the final commission payment but it is found that the employer extended the time period beyond the day of resignation and paid the extra time at a later date.

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: November 17, 2016

Original: Claimant

cc: Employer

TFH/das