

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ELECYR CORPORATION

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses
RSA 275:43 V unpaid personal days
RSA 275:44 IV liquidated damages

Employer: Elecyr Corporation, 3 Front Street, 4th Floor, Rollinsford, New Hampshire
03869

Date of Hearing: December 14, 2016

Case No.: 54165

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 17, 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 November 15, 2016.

The claimant testified that he worked for the employer for about a year and a half. The claimant testified that he did not have a written hiring agreement and there were no written policies in place. The claimant did provide a witness who stated that he was an hourly employee and when he separated service with the company he was paid for his accrued leave. He did state that this was a policy unique to hourly employees.

In the Wage Claim the claimant is seeking expenses, wages and paid time off. The claimant is also seeking liquidated damages because he feels that the employer was willful and did not have good cause for their action(s). He is also seeking interest on any award under the Wage Claim.

The claimant testified that he went on a business trip to Pittsburg, Pennsylvania at a personal cost of \$694.00. He did not request the payment of this expense, in writing. However, the claimant testified that he felt the employer would eventually pay the expenses.

The claimant testified that he requested a pay raise and was told that the company was not in any position to grant a raise. However, in an oral agreement with one of the company's owners, the claimant was allowed to withdraw money from a PayPal account that was not

owned by the company. The claimant testified that he was to make ten withdrawals from the PayPal account and he had withdrawn six of the ten payments.

The claimant also testified that he was accruing leave during his employment. At the time of separation the claimant said that he had a total of twenty-two days accrued. He used seven of those days and so he feels that he is due fifteen days of time for a total of \$1,875.00. The claimant testified that there is no written policy for the payout of the accrued leave.

The claimant testified that he was told by the employer that he would be paid all wages once the company equipment, in his possession, was returned to the employer. This did happen and the claimant was paid for his last earned wages except for the issues listed above.

The employer testified that there is an employee handbook in place. The handbook deals with the payment of expenses and wages. The employer believes that all wages have been paid.

The employer testified that the claimant never submitted any expenses that he suffered on behalf of the employer. Without the documentation the employer did not pay for the incurred expenses. The employer did agree, within the context of this hearing, to pay the expenses upon receipt of documentation from the claimant.

Notwithstanding the issue of paying expenses upon receipt of documentation, the employer testified that all wages have been paid. Any wages agreed upon with the claimant, at the time of hire, were paid in full. The claimant's testimony that he had a PayPal agreement with one of the company owners was a personal agreement and not any part of company policy. In fact the employer testified that they do not have a PayPal account for the company. Whatever agreement was reached with one of the owners was a personal matter and had nothing to do with the company. The employer does not believe that anything is due in actual wages.

The employer testified that the company terminated the claimant because of lack of contact. The claimant was not readily available when the company needed him. Over the course of his employment the claimant used around twenty-six days of leave. The company does not have any policy to pay out unused leave for an employee in a position held by the claimant. There are rules and policies for hourly employees but none for salaried employees. The policy is one of, "use it or lose it" relative to leave time accrued for salaried employees. There is no time owed upon separation.

The employer feels that they took every effort to make sure that the law was followed and that they have paid all wages due. The question on expenses will be cleared up once the claimant brings forward the necessary documentation for demonstration of the expenses having been incurred.

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 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 275:43 V-

Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places issues such as employee expenses and leave time into the category of wages when the expenses are due and the leave time is due and owing.

RSA 275:44 IV-

If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

Under this section of the law, the claimant can seek liquidated damages up to the amount of the Wage Claim when the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and he did meet part of the burden.

The claimant prevails in the area of expenses. The claimant did suffer expenses on behalf of the employer and these should be paid. The testimony shows that they will be paid upon filing of the expense accounts.

The issue of paid time off is invalid. The employer did have written policies which specified payout of accrued leave time, for hourly employees, but none for the salaried employee. The claimant has the burden of demonstrating that the accrued time, through policy or practice should be counted as wages owed upon separation, and the claimant has failed to do so. The company was credible in its position that there is no payout of time, per policy or practice to salaried employees.

The company also prevails on the issue of wages related to the purported "PayPal agreement." The last paycheck was paid in full and the only issue outstanding was the issue of the PayPal account. The employer was credible in their testimony that they do not have a PayPal account. The claimant did not bear his burden to show that the money received from the PayPal account was in fact wages.

The withdrawals, absent any written agreement, could have been a case of a payment from one individual to another. It could have been a loan from one individual to another, the fact remains that the claimant was receiving money from another individual's PayPal account with no documentation of what it was for. There is also the issue of federal taxes on the money but this is not a factor in this Wage Claim.

The Hearing Officer does not find that the employer was willful and did not have good cause for their actions. The request for liquidated damages is denied.

Outside of the agreement at the hearing to pay the expenses of \$694.00, 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, absent the issue of expenses in the amount of \$694.00 which to date, remains unpaid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 10, 2017
Original: Claimant
cc: Employer
TFH/slh