

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Next Step Motor Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/bonus
RSA 275:43-b unpaid salary
RSA 275:48 I/II illegal deductions
RSA 275:44 IV liquidated damages

Employer: Next Step Motor Inc, 145 Rte 20, Lebanon, NH 03766

Date of Hearing: January 25, 2017

Case No.: 54195

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant's attorney objected to the Hearing Officer on the basis that she had held prior claims with the same employer.

The following administrative rules address Withdrawal of a Hearing Officer and Ethical Standards for the Department.

Lab 204.05 Withdrawal of Hearing Officer.

(a) Upon his or her own initiative or upon the motion of any party the hearing officer shall withdraw from any adjudicative proceedings for good cause.

(b) Good cause shall exist if the hearing officer:

(1) Has a direct interest in the outcome of the matter, including but not limited to, a financial or family relationship with any party;

(2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of the case, or;

(3) Personally believes that he or she cannot fairly judge the facts of the case.

(c) Mere knowledge of the issues or acquaintances with any party or witness shall not constitute good cause for withdrawal.

and:

Lab 208.01 Ethical Standards. Hearing officers, Board members, and legal counsel to the department in the discharge of their official duties, and all persons participating in the hearings process of the department, or the board shall observe and be governed by the following ethical standards of conduct:

(a) Hearing officers and board members shall avoid the appearance of impropriety in all activities. They shall conduct themselves in a manner which promotes public confidence in their integrity and impartiality and of the hearings process of the department in general;

(b) Hearing officers, board members, and legal counsel to the department shall:

- (1) Perform their duties impartially and diligently;
- (2) Know the applicable laws and the rules;
- (3) Maintain order and decorum in proceedings before them;
- (4) Be patient and courteous to those persons who participate in the hearings process; and
- (5) Dispose promptly of matters heard by them;

(c) Hearing officers and board members shall disqualify themselves when their impartiality might be reasonably questioned. They shall not participate in a contested case where they have a personal bias or prejudice concerning a party or a party's representative, or personal knowledge of disputed evidentiary facts concerning the proceeding, or where they or a relative is a party to the proceeding or is known by them to have a substantial interest in the outcome of the proceeding;

(d) Hearing officers and board members shall avoid ex parte communications. They shall not permit private communications concerning a pending matter unless such communications are at the same time provided to all other persons interested in the matter.

The objection as stated did not show bias or prejudice, only that the Hearing Officer was acquainted with the employer's representatives, through matters at this Department. The rule clearly states that mere knowledge of the issues or acquaintances with any party or witness shall not constitute good cause for withdrawal.

Therefore, the objection was overruled and the hearing proceeded.

The claimant originally asserted, through the filing of his wage claim, that he was due \$13,132.73 in unpaid bonus, \$3,000 for two weeks of unpaid salary; \$1,000 in deductions made to his salary over the first two weeks of employment; \$1,500 deducted from his wages as "cash back to Johanna"; and \$1,000 deducted from his wages for damage to a vehicle. He further seeks liquidated damages.

At the hearing, the claimant removed the claim for the \$1,000 in deductions made to his salary over the first two weeks of employment.

The employer denies the claimant was not paid all salary due. They further deny he is due any bonus pursuant to the written policy. They deducted monies for a personal loan from Ms. Cicotte, as agreed to by the claimant. The claimant signed a document which authorized the employer to make deductions from his wages up to \$1,000 for any damage to vehicles.

As they believe the claimant has been paid all wages to which he was entitled, they have not willfully and without good cause withheld any wages, rendering the claim for liquidated damages is invalid.

FINDINGS OF FACT

The claimant worked for the employer from June 6, 2016 through September 13, 2016, when the employer terminated his employment. There were additional conversations after September 13, 2016, discussing whether or not the claimant could come back to work, but the claimant was not rehired.

The claimant argues he is due \$13,132.73 in unpaid bonus. He argues he began work expecting to be the used car manager director, however, the job changed to be the general manager of the Chrysler store. He argues he originally signed an agreement with the employer effective June 2, 2016, which discussed bonus, as the used car manager director. He signed a separate policy statement on June 7, 2016, that discussed employee eligibility for bonus payments. He then signed a second agreement on June 8, 2016, as for the position of general manager of the Chrysler store.

The claimant argues that the June 7, 2016, policy statement, which precludes any employee who is not active at the time of bonus payments or any employee who is terminated, from receiving bonus payments, was invalidated by the June 8, 2016, agreement. Therefore, he argues he is due the bonus payment.

Further, he argues the bonus due is based on the Daily Activity Report (DAR) which provides the correct dollar figure on which to base the bonus figures.

The employer argues the claimant is not due any bonus under the written policy. The June 2, 2016 and June 8, 2016, agreements outline the wages and bonus figures payable for the positions. The June 7, 2016, policy statement refers to "any employee" eligible for a monthly bonus needs to be an active employee at the time the bonus is dispersed or the bonus is forfeited, regardless of position.

RSA 275:49 I requires that an employer inform employees of the rate of pay at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the policy and practices regarding the eligibility of bonuses, and that he needed to be an active employee at the time of the payment of bonuses and that termination both forfeit any bonus payment.

The claimant's argument that the June 8, 2016, agreement supersedes the June 7, 2016, notice of an employee's eligibility for any bonus payment, is not found

persuasive. The June 7, 2016 agreement refers to “any eligible employee” and is not tied to any employment position or bonus calculation agreement. The June 7, 2016, policy is a stand-alone notice to the employee regarding eligibility. The agreements between the claimant and employer for bonus calculation are separate and distinct from the June 7, 2016, policy.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed bonus under the written policy of the employer.

The claimant argues he is due \$3,000 in unpaid salary/wages, \$1,500 for each of two weeks he claimed he worked and did not receive wages. He could not articulate any specific weeks during which he did not receive payment, only that he worked a total of sixteen weeks and only received fourteen weeks of pay checks.

The employer argues the claimant has been paid all wages due.

As the claimant was unable to articulate the weeks for which he did not receive any salary/wages, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed salary/wages.

The employer made two deductions from the claimant’s wages, \$1,500 for “cash back to Johanna” and \$1,000 for damage he caused to a vehicle on the lot.

The claimant argues he did not agree to deduct the cash of \$1,500 from his wages. He also argues that it is a personal matter which is not related to his employment.

He agrees that he signed a document stating he would be responsible for the first \$1,000 of damage that he might cause to a vehicle on the lot. However, he does not believe this is an allowable deduction from his wages.

The employer argues that there was a verbal agreement with the employer to deduct the \$1,500 personal loan from the claimant’s wages. They agree this agreement was not reduced to writing. Further, the claimant did sign an authorization for the deduction of \$1,000 for damage he admits he caused to the vehicle.

RSA 275:48 Withholding of Wages I (b) Allows an employer to make certain deductions from an employee’s wages if they have first secured a written authorization by the employee for deductions, which for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, specifically, legitimate loans:

(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:

(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.

An employer is only authorized to withhold deductions for legitimate loans from an employee's wages if the preceding conditions are met. The employer admits the conditions were not met.

The Hearing Officer finds the claimant proved by a preponderance he is due the claimed \$1,500 in illegal deductions for the "cash back to Johanna" deduction.

RSA 275:48 Withholding of Wages. –

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:

(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.

The claimant's signature on the acknowledgement that he would be responsible for the first \$1,000 of damage he caused to a vehicle does not meet the requirements under RSA 275:48 I(b)(12). This deduction is not accruing to the benefit of the employee and it does create a financial advantage to the employer, to recoup \$1,000 from an employee, whose wages are captive to the employer.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed \$1,000 in illegal deductions for the damage to the vehicle.

The claimant argues the employer should be held liable for liquidated damages.

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".

Because no commissions or salary were found to be due, no liquidated damages can be assessed for these portions of the claim. However, even if the commissions or salary had been found to be due, the employer presented credibly that they held a genuine belief that the claimant had been paid all wages due. Therefore, the Hearing Officer would have found the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good case failed to pay him all

commissions and salary due because the employer had a genuine belief that the wages were not owed.

The claim for illegal deductions in the amount of \$2,500 (\$1,500 + \$1,000) was found valid through this hearing.

The employer credibly testified they believed they were lawful in making these deductions from the claimant's wages.

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due in the time required because the employer had a genuine belief that the they deductions were lawful.

The claimant requested attorney fees in the original claim.

RSA 275:51 V does not authorize this Department to award attorney's fees or costs. This is distinct from RSA 275:53 III that allows "costs of the action, and reasonable attorney's fees", but by a "court of competent jurisdiction". The New Hampshire Department of Labor is an administrative agency and a part of the executive branch of government. The Department is not a "court of competent jurisdiction". Therefore, no fees or costs can be awarded through this decision.

In the claimant's summary, counsel requested interest on this claim. Interest was not requested prior to nor noticed for the hearing and therefore, cannot be considered in for this hearing.

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 that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed bonus/wages, it is hereby ruled that this portion of the Wage Claim is invalid.

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

As RSA 275:48 I allows an employer make deductions from wages due an employee with proper authorization, and as this Department finds that the employer failed to obtain the proper authorization for the deduction for the loan, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,500.00.

As RSA 275:48 I allows an employer make deductions from wages due an employee which accrue to the benefit of the employee, and as this Department finds that the deduction for vehicle damage did not accrue to his benefit, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,000.

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 \$2,500 (\$1,500 + \$1,000), less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: February 7, 2017

Original: Claimant
cc: Employer

MJD/das