

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Stratham Subaru Inc. dba Exeter Subaru

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/commissions
RSA 275:44 IV liquidated damages

Employer: Stratham Subaru Inc. dba Exeter Subaru, 37 Portsmouth Ave, Stratham,
NH 03885

Date of Hearing: December 22, 2016

Case No.: 54205

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed unpaid wages and commissions in an unspecified amount.

At the hearing, he clarified he was seeking the following wages:

- \$183 for one day not paid the week prior to his termination;
- \$870 for four days not paid at the end of September 2016;
- \$1,150 in commission for August 2016; and
- \$1,100 in commission for September 2016.

The employer denies the claimant was not paid for all wages due. They assert that the claimant was paid all wages due pursuant to the written agreement and is not due any commissions.

FINDINGS OF FACT

The claimant worked for the employer from July 26 through September 26, 2016, when he was terminated by the employer. He had a written agreement to receive a guaranteed wage of \$913 per week for 90 days.

The claimant argues he did not receive his full weekly salary for two weeks, though he could not articulate the dates for either week, nor did he present any evidence, such as pay stubs to show the weeks he did not receive his full weekly wage/salary.

The employer presented a pay stub, Defendant's Exhibit #1, to show the claimant received one days' pay, \$182.60, gross, for the pay period of September 25 through October 1, 2016, his last pay period employed.

The employer admitted the claimant received only one days' worth of his weekly guarantee salary for the pay period of September 25 through October 1, 2016, when they terminated his employment.

The claimant received a "guarantee of \$913 per week", which is analogous to a salary. RSA 275:43-b requires that an employer pay a salaried employee their full salary for any pay period in which the employee performs any work. It also allows employers to make deductions to a salaried employee's wages under certain circumstances, but none of those exceptions apply to the facts of this case.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the balance of his salary for the pay period ending October 1, 2016, or \$730.40 (\$913.00 - \$182.60). He failed to prove he is due any additional salary.

The claimant argues he is due commissions for August and September 2016, pursuant to a verbal conversation with the employer, after the July 25, 2016, agreement.

The employer credibly argues the claimant is not due any commissions. The claimant's written pay plan date July 25, 2016, does not notify him that he will receive any commissions. The claimant repeatedly asked for more money, which was one of the reasons he was terminated. They did not agree to pay any additional commissions in any verbal discussions.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages/commissions.

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 he was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$730.40.

As RSA 275:43 I requires that an employer pay all wages, including commissions, due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he was not paid all wages/commissions due, it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to Robert Clarke, in the total of \$730.40, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 5, 2017

Original: Claimant
cc: Employer

MJD/das