

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

GLOBAL PLASTICS LP

DECISION OF THE HEARING OFFICER

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

Employer: Global Plastics, LP, 99 Middle Street, Manchester, NH 03101

Date of Hearing: January 30, 2017

Case No.: 54355

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 28, 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 January 5, 2017. The claimant was allowed to testify telephonically for the hearing. The hearing was held open for two days so the employer could check their payroll records.

The claimant testified that she worked for the employer for nearly two years. She was a salaried employee who was paid twice a month. The claimant stated that the pay period in question started on November 1, 2016. She worked until Friday, November 4, 2016 and then had to leave for a family emergency in Texas. On Sunday, November 6, the claimant notified the Chief Operating Officer that she would be back on November 9, 2016.

On November 9, 2016, the claimant notified the company that she would not be back until Monday, November 14, 2016. On November 14, 2016, the claimant notified the employer that November 14, 2016, would be her last day of work. The claimant is seeking \$1,730.77 for the last pay period in which she worked.

The employer testified that the claimant did not have any leave time to her credit when she left the employ of the company. The employer maintains that the claimant's last day of work was November 4, 2016 and they issued a check for that time but the check was not cashed. After the employer checked on the issued check and found that it was not cashed, the employer stopped payment on the check and will await the outcome of this decision.

The employer maintains that there is no work performed away from the office without the permission of the company and this was not granted by the employer. The employer feels that only the time worked from November 1, 2016 to November 4, 2016, should be paid.

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 for all wages due at the time the wages are 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 deals with the way the wages must be paid to a salaried employee and when the wages can be stopped.

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. The claimant has the burden to show that there are wages due and owing and she met this burden.

The issue comes down to the fact that an employee, who is holding a salaried position, is entitled to be paid for the pay period in which work is performed. There is no dispute that the claimant worked for the first four days of the pay period. The claimant left for a family emergency and did call in to extend the time away from work. It is found by the Hearing Officer that the employer allowed for this time off and it is apparent that the company would have taken the claimant back once the family emergency was over.

The Wage Claim is just for the pay period in which the claimant resigned at the end of the pay period. Work was performed in that pay period and the claimant resigned on her own for personal reasons.

The Wage Claim is valid in the claimed amount of \$1,730.77. This amount includes the four days worked at the start of the pay period.

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 Hearing Officer finds that the claimant proved by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,730.77.

The employer is hereby ordered to send a check to this Department, payable to Allison Roane in the total of \$1,730.77, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: February 23, 2017
Original: Claimant
cc: Employer
TFH/das