

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

TULLEY AUTOMOTIVE GROUP

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages, commissions and bonus
RSA 275:43 V unpaid vacation time

Employer: Tully Automotive Group, 147 Daniel Webster Highway, Nashua, NH 03060

Date of Hearing: March 1, 2017

Case No.: 54660 and 54518

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 29, 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 February 9, 2017. This filing was for Wage Claim #54518.

A second Wage Claim was filed with the Department of Labor on January 24, 2017. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on February 9, 2017. This filing was for Wage Claim #54660.

Both Wage Claims were combined into one hearing.

The claimant testified that he asked about the payout of commissions and accrued leave if he gave a two week notice. The claimant testified that he was told that by working through the notice period for his resignation, he would be paid for the requested items.

The claimant testified that he worked for the employer for over two years and he did sign a wage plan and a benefit plan. However, the claimant said that he relied on the verbal assurance that he would be paid for earned commissions and for accrued vacation time.

The claimant is also seeking a bonus payment for a BMW Credit Card. It was a program where if the sales person sold an extended warranty on the vehicle they would receive a credit card from the manufacturer of the vehicle.

The employer testified that that the signed rules and policies clearly stated that the employee had to be on the payroll for the payment of commissions and accrued time. The claimant should have been aware of this because he signed off on the policy as having reviewed it and understood the policy.

The employer also testified that the BMW Credit Card bonus was a program from the manufacturer and had nothing to do with the local dealership. The bonus was not considered part of wages although the employer did testify that they would try to see why there was a hold up in the payment of this bonus.

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 an issue such as vacation time into the category of wages when the time is due and owing.

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 claimant was not credible when he testified that he relied on the verbal exchange with another employee and felt that the conversation negated the written and signed policies. The written policy is the controlling document in this issue. The claimant should have been aware of the policy as he signed off on them.

The employer was credible when they discussed BMW Credit Card and the role of the dealership, if any, relative to provision of the reward card as it was not a part of wages. The bonus is not controlled by the dealership but by the manufacturer. The dealer did say that they would try to see when the bonus would be paid but they are not responsible for the payments issued.

The Hearing Officer finds that the Wage Claim is invalid. All aspects of the policies and procedures were followed in this case, by the employer.

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: March 28, 2017

Original: Claimant
cc: Employer
TFH/das