

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Ischool Campus LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43-b unpaid salary
RSA 275:44 IV liquidated damages

Employer: Ischool Campus LLC, 5505 South 900 East, Salt Lake City, UT 84117

Date of Hearing: April 18, 2017

Case No.: 54722

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was not paid timely.

At the hearing, the claimant clarified that he was asserting that he did not receive the balance of his salary for the pay period in which he was laid off by the employer, in the amount of \$3,076.80.

The employer agreed to hearing the issue of RSA 275:43-b at the hearing.

The employer argues they paid the claimant through January 3, 2017, prorating his salary to the day, pursuant to their regular process.

FINDINGS OF FACT

The employer terminated the claimant's employment through a reduction in force on January 3, 2017. He was a salaried employee.

The claimant argues he did not receive his full salary for the pay period of January 1 through January 15, 2017. He seeks the balance of \$3,076.80 as due.

The employer agreed they prorated the claimant's salary to the day, for January 3, 2017, due to the layoff, pursuant to their regular process. They further argue that they did not believe the claimant performed work on that day.

They agreed the claimant was notified of a conference call on January 3, 2017, without notice as to the content of the call. During the conference call, he was notified

he was part of a reduction in force. Further, the claimant provided credible testimony that he did perform work for the benefit of the employer on January 3, 2017.

RSA 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.

The claimant performed work for the benefit of the employer during the pay period of January 1 through January 15, 2017, and did not receive his full salary. RSA 275:43-b allows an employer to prorate an employee's salary in certain circumstances; however, none of these apply to the facts of this case.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence that he is due the claimed salary in the amount of \$3,076.80.

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 the Wage Claim is valid in the amount of \$3,076.80.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$3,076.80, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 5, 2017

Original: Claimant
cc: Employer

MJD/das