

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

**v.**

**Hypertherm, Inc.**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43-b unpaid salary  
RSA 274:44 IV liquidated damages

**Employer:** Hypertherm, Inc.

**Date of Hearing:** October 5, 2017

**Case No.:** 55530

**BACKGROUND AND STATEMENT OF THE ISSUES**

The current issues concern whether the claimant is due the balance of his biweekly salary given his employment was terminated at the beginning of a pay period and whether the employer is obligated to pay the employee liquidated damages.

The employer designs and manufactures plasma, laser and waterjet cutting systems for a variety of industries. The claimant was employed as a Commodity Manager.

The claimant alleges the employer fired him for no reason, and as such he is due the balance of his salary for the pay period in the amount of \$1,200 and liquidated damages in the amount of \$1,200 for a total claim amount of \$2,400.00.

The employer holds the claimant engaged in improper behavior and communication with customers and competitors to the extent the employer felt they could no longer trust the claimant. Therefore the employer contends there was good reason to terminate the claimant's employment and pay him a prorated salary as provided by statute. The employer holds the claimant is not entitled to liquidated damages.

As a basis of the claimant's assertion he is owed the balance of his salary he filed a Wage Claim with this Department on July 17, 2017. The employer's objection to the claim was received on July 24, 2017. On August 25, 2017 the claimant amended his claim to include a request for liquidated damages. A Notice of Hearing was sent to both parties on September 13, 2017 and accordingly a hearing was held on October 5, 2017.

## **FINDINGS OF FACT**

The claimant worked for the employer from May 28, 2013 through February 13, 2017. His starting salary was \$70,000.00 per year, paid biweekly with fringe benefits.

The claimant submitted eight (8) continuous semiannual performance reviews for the years 2013 through 2016 as a challenge to the employer's assertion he was fired for cause. They reflect the claimant "consistently achieving targets" or "exceeding targets" on year-end reviews.

The employer credibly testified there were performance issues that came to their attention during November, 2016. At this time the claimant's supervisors met to address their concerns. Although there were some issues, the employer acknowledged the claimant's job performance was strong in other areas. A decision was made against formal corrective action; instead a remedial approach was to be implemented. The claimant was unaware of this meeting taking place, the issues discussed or conclusions made.

After a closer examination was made of the claimant's work they grew concerned with how he was managing a relationship with a particular supplier.

On February 10, 2017 the employer placed the claimant on administrative leave pending the results of an investigation. On February 13, 2017 the employer terminated the claimant's employment.

The employer submits, given the information garnered from their investigation, they would no longer be able to trust the claimant. The issue concerns the inappropriateness of the claimant's verbal conduct with the supplier. Thus, the employer holds they had sufficient reason to terminate the claimant's employment for cause. The employer contends their decision had more to do with trust than the claimant's performance.

The claimant disagrees with the employer's contention he mismanaged relationships with a supplier. He asserts the relationships he inherited when he was first hired were handled well and as a result were profitable for the employer.

The employer contends that the claimant's employment was terminated for cause, and therefore he is not entitled to his full salary for the pay period or liquidated damages.

## **DISCUSSION AND CONCLUSIONS**

RSA 275:43-b II allows employers to 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 [emphasis added]***.

The current standard for a "for cause" termination is established by Lakeshore Estates Associates LLC v Michael F. Walsh (Belknap Superior Court No. 06-E-259, April 4, 2007). The Decision sets the standard as, "articulated at 82 Am. Jur. 2D *Wrongful*

*Discharge* § 183 (2003), which provides that an employer may dismiss an employee "for cause" if the employee engages in misconduct. An employee's misconduct must comprise reasonable grounds for termination, and the employee must have received notice, express or fairly implied, that such misconduct would be grounds for termination. 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003); see also *Lowell v U.S. Sav Bank*, 132 N.H. 719, 726 (1990) (an employer must offer an employee a proper reason for a "for cause" dismissal). In reviewing a "for cause" dismissal, "the fact finder must focus not on whether the employee actually committed misconduct, but rather on whether the employer reasonably determined it had cause to terminate." 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003)".

The Hearing Officer finds the claimant presented evidence which is credible, but not more credible, than the employer's evidence. The burden of proof lies with the claimant in these matters. The claimant has the burden to prove by a preponderance of the evidence that the claimed wages are due. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds that the employer reasonably determined that it had cause to terminate the claimant when they were confronted with issues surrounding his management of a relationship with a supplier, leaving the employer reason to question his reliability. The Hearing Officer, therefore, finds that the employer terminated the claimant "for cause" and that the claimant fails to prove by a preponderance of the evidence that he is owed any additional salary.

The Hearing Officer finds that the claimant failed to meet this burden of proof. The claimant therefore fails to prove by a preponderance of the evidence that he is owed the claimed wages.

The claimant argues he is due liquidated damages for the employer's failure to pay him the balance of his salary.

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."

As no wages are found to be due, no liquidated damages can be awarded.

At the Hearing the employer requested certain proprietary documents belonging to them be removed from the file and destroyed. These documents were submitted by the claimant who testified at hearing he had done so in error, and has no objection to the employer's request. Pursuant to the employer's request these documents, both paper and electronic, have been destroyed.

## **DECISION**

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 II allows employers to prorate salary for employees who are terminated for cause, this Department finds the claimant failed to prove by a preponderance of the evidence that he is due additional wages, it is hereby ruled that this portion of the Wage Claim is invalid.

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 timeframe 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, it is hereby ruled that this portion of the Wage Claim is invalid.

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David M. Zygmunt  
Hearing Officer

Date of Decision: November 7, 2017

Original: Claimant  
cc: Hypertherm, Inc., P. O. Box 5010, Hanover, NH 03755

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