

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Solon Marketing Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages and bonus
RSA 275:44 IV liquidated damages

Employer: Solon Marketing Inc, PO Box 66157, Austin TX 78766

Date of Hearing: December 4, 2017

Case No.: 56161

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$3,756 in unpaid bonus. She further seeks liquidated damages.

The employer initially denied the claimant was due any further bonus.

At the hearing, the employer agreed the claimant would be paid a bonus pursuant to the written policy. As of the date of the hearing, she had earned a bonus of \$1,711, and could potentially earn additional bonus through the end of the bonus period which is year-end. They will pay her bonus as noted in the written policy, before the end of March 2018.

They argue liquidated damages are not appropriate as the wages are not yet due.

FINDINGS OF FACT

The claimant worked for the employer from May 2016 through September 1, 2017, when she was laid off.

The claimant argues she sold 3,756 cases of beer, for which she should receive a bonus of \$1 per case, or \$3,756. She argues this bonus was due upon separation from employment on September 1, 2017.

The parties do not disagree that the claimant received orders for the claimed 3,756 cases.

The employer agrees the claimant is due a bonus of the final numbers of cases sold, which will be computed through December 31, 2017. They argue orders received are not the same as "cases sold" in the written agreement. As of the date of the hearing 1,711 cases have been sold. She will receive her bonus payment on cases sold through December 31, 2017, prior to March 31, 2018, pursuant to the written policy.

The claimant's written agreement dated March 30, 2016, regarding this bonus reads as follows, "Annual Bonus \$1/case sold as a result of chain placement negotiated. Capped at \$50,000 Paid by March 31 of the following year."

RSA 275:44 Employees Separated From Payroll Before Pay Days. –

III. When work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the employer shall pay in full to such employee not later than the next regular payday, as designated under RSA 275:43, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

At the time of the claimant's layoff on September 1, 2017, the annual bonus period had not yet ended, and therefore, no bonus/wages had been earned and no bonus was due at that time. The bonus period will end on December 31, 2017, and the employer will make computations for any bonus due and payment will be made by March 31, 2018.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed bonus at this time. The claim for bonus is not ripe as the bonus period has not yet ended and the timeframe for payment has not yet passed.

The claimant may file a separate claim if, after the bonus payment due by March 31, 2018, she continues to feel bonus is due her.

Because no wages are found to be owed, no liquidated damages can be awarded.

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 this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

As 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 time frame 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 in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: December 20, 2017

Original: Claimant
cc: Claimant's Attorney
Employer
Employer's Attorney

MJD/nm