

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Dan O'Brien Kia

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
Employer: Dan O'Brien Kia, 158 Manchester Street, Concord, NH 03301
Date of Hearing: January 29, 2018
Case No.: 56455

BACKGROUND AND STATEMENT OF THE ISSUES

The current issues concern unpaid wages relative to commissions and a bonus.

The employer holds that the claimant has been paid all wages due.

The employer purchased the business from the claimant's previous employer.

On the basis of the claimant's assertions he is owed unpaid wages the claimant filed a Wage Claim with this Department on December 1, 2017; a Notice of Wage Claim was forwarded to the employer on December 4, 2017. The employer's objection was received by this Department on December 14, 2017 and forwarded to the claimant this same day. The claimant requested a Hearing on this matter on December 28, 2017. A Notice of Hearing was sent to the parties on January 11, 2018. Accordingly a Hearing was held on January 29, 2018.

FINDINGS OF FACT

The employer purchased the business on September 12, 2017.

The claimant worked for the employer, an auto dealership, as a Service Writer from September 12, 2017 until October 31, 2017. On November 1, 2017 the claimant transferred into the employer's sales department.

The parties agree the claimant's wage plan as a Service Writer was to be the same as it had been under the former owner. The claimant earned a \$400.00 per week salary, a \$100.00 per week draw, plus commissions and incentive bonuses.

The claimant testified that the wages he received as a Service Writer with the current employer were different than those under his former employer.

The employer testified that there was no differences in the manner the claimant's wages were calculated.

The employer provided a claimant-signed a compensation program agreement dated September 12, 2017 for the claimant's Service Writer position.

The claimant transferred to the employer's sales department on November 1, 2017.

A compensation agreement for the claimant's sales position was not presented.

The claimant resigned from the company on November 15, 2017.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed any additional wages. 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 claimant holds he is owed \$1,558.08 from unpaid wages as a Service Writer for the employer. The employer contends the claimant was paid all wages.

Both parties submitted evidence to support their position. The Claimant's evidence included a spreadsheet listing compensable wages for commission as \$29,665.23,¹ leaving a commission of \$2,521.60.²

The employer has calculated gross sales as \$13,720.79 with a reduction of \$2,385.31, leaving an owed commission of \$963.52.

The employer explained that when determining the claimant's commission, certain internal revenue is not included in the calculation. Further, the employer

¹ Parties agree for the purpose of calculating commission the gross values are reduced by the discount. The net commission is 8.5% of that number.

² Parties acknowledge any money owed is reduced by draws against commission.

submitted a signed compensation program which outlines when commission will be earned.

The Hearing Officer finds that the claimant's testimony in regard to this portion of the claim to be as credible, but not more credible than that of the employer. He did not prove by a preponderance of the evidence that he is owed additional wages in commissions.

On November 1, 2017 the claimant began working in the employer's sales department.

The claimant's compensation plan for his sales position included a "Fast Start Bonus" program whereby if the claimant sold eight (8) cars by the 15th of the month (defined by the employer as the sale being "posted" by the 15th of the month) he would receive an additional \$750.00 as a bonus. In order for a sale to be "posted" certain paperwork like copies of the customer's bank statements and proof of residency is required in order for the customer to take possession.

The claimant testified using an exhibit that reflected he had sold nine (9) vehicles between November 4, 2017 and November 13, 2017.

The employer testified using an exhibit that accounted for all the claimant's nine (9) sales with the addition of corresponding "posting dates." Two of the sales had postings beyond the 15th of the month. The employer credibly testified the later postings were due to required paperwork being late and as such the two sales were not included when the employer consider the claimant's eligibility for the bonus program.

The Hearing Officer finds that the claimant's testimony in regard to this portion of the claim to be as credible, but not more credibly that that of the employer.

The claimant has the burden of proof in these matters to show by a preponderance of evidence that he is owed the additional wages. The Hearing Officer finds that the claimant did not meet his burden of proof, as his testimony is only as credible as the employer's, not more so.

DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee and as this Department finds that the claimant did not prove by a preponderance of the evidence that he is owed additional wages, it is hereby ruled that this Wage Claim is invalid.

Date of Decision: March 2, 2018

Original: Claimant
Cc: Dan O'Brien Kia, 158 Manchester Street, Concord, NH 03303
Attention: Thomas Kuhn, General Manager,