

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

Phantom Fireworks Showrooms, LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages, unpaid bonus

Employer: Phantom Fireworks Showrooms, LLC
2445 Belmont Avenue, Youngstown, OH 44505

Date of Hearing: February 26, 2018

Case No.: 56460

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns a dispute regarding an unpaid bonus.

The claimant asserts, in her role as a store manager, she is owed a performance bonus.

The employer holds the claimant has been paid all wages due her and argues discretionary bonuses are not wages.

On the basis of the claimant's assertions she is owed an unpaid bonus the claimant filed a Wage Claim with this Department on December 4, 2017; a Notice of Wage Claim was forwarded to the employer on December 5, 2017. The employer's objection was received by this Department on December 15, 2017 and forwarded to the claimant this same date. The claimant requested a Hearing on this matter on December 29, 2017. A Notice of Hearing was sent to the parties on February 9, 2018. Accordingly a Hearing was held at the New Hampshire Department of Labor on February 26, 2018

FINDINGS OF FACT

The claimant worked for the employer from 1985. Most recently the claimant worked as the manager of the employer's Seabrook, N.H. location.

Part of the claimant's compensation included eligibility for a performance bonus.

The claimant asserts she is owed a bonus of \$13,000.00 for the year 2017.

The employer acknowledges the claimant earned bonuses in past years but holds her performance did not meet the standards set forth in the bonus criteria and therefore the claimant has been paid all wages due.

On October 10, 2017 the employer met with the claimant and identified her performance issues; this date coincides with the claimant's last day of work.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she 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.

First, the employer argues employee bonuses are not wages. However, this argument per se is not persuasive New Hampshire statute RSA 275:42 III defines wages "means compensation, including hourly health and welfare, and pension fund contributions required pursuant to a health and welfare trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of an employee and agreed to by his employer, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation" (emphasis this writer's).

RSA 275:43 V reads in relevant part:

"...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 [emphasis added].

A bonus could be deemed wages. However, a bonus becomes wages "when due." "When due" is a reference to contingencies specified in the description of the employers' bonus that the employee needs to meet in order to be eligible for the bonus. These terms and conditions are at the sole discretion of the employer; however, RSA 275:49 V and Lab 803.03 (f) (6) requires them to be in writing and acknowledged by the employee. Such a plan was not submitted by either party.

The issue in this case is whether the claimant earned the bonus. Just because the employer is out of compliance with RSA 275:49 and Lab 803.03 (f) (6) does not necessarily mean the claimant is owed the bonus she claims.

The contingencies of the bonus have been described by both parties in various details and the parties have differing opinions as to the claimant's eligibility to receive the bonus. The employer testified that the anticipated bonus is based on a number of facts. Those factors include the following:

1. The manager having absolutely no performance or efficiency issues;
2. Visit reports from the retail operations team (executives, corporate employees and corporate support),
3. Results of any required inspections by governmental or administrative authorities, and
4. The manager must work all specified hours during the fireworks season.
See Employer's Response to Wage claim.

The employer credibly testified through their witnesses and documentation that they had performance issues with the claimant that precluded the claimant from receiving her 2017 bonus.

The claimant did not provide any specific details as to how her anticipated bonus was calculated. She articulated that in prior years she had received a bonus. However, she spent most of her testimony contradicting the employer's accusations as to her poor work performance.

This Hearing Officer finds that the claimant's testimony in regard to this claim is credible; however I find the employer's testimony more credible. The claimant has not proven she has earned the bonus she claims is due her. Without clear documentation to support her claim that the bonus was earned, and due, she does not meet her burden of proof that by a preponderance of the evidence she is owed additional wages in the form of a performance bonus.

DECISION AND ORDER

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 failed to prove by a preponderance of the evidence that she has not been paid all wages due, it is hereby ruled that this Wage Claim is invalid.

Date of Decision: March 28, 2018

Original: Claimant

CC: Phantom Fireworks Showrooms, LLC 2445 Belmont Avenue, Youngstown, OH
44505

Attention: Robin Gallitto, Deputy General Counsel

DMZ/nm

