

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.: 56517

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns unpaid wages relative to a guarantee of a minimum monthly salary.

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

On the basis of the claimant's assertions he is owed unpaid wages the claimant filed a Wage Claim with this Department on December 13, 2017; a Notice of Wage Claim was forwarded to the employer on December 15, 2017. The employer's objection was received by this Department on December 19, 2017 and forwarded to the claimant this same day. The claimant requested a Hearing on this matter on December 29, 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 claimant worked for the employer, an auto dealership, as a Sales Manager from September 12, 2017 until November 15, 2017.

The parties' agreed to a claimant's Pay Plan (The Plan) signed by both parties, dated September 25, 2017 with an effective date of September 13, 2017. The Plan includes a guaranteed \$8,000.00 per month for sixty (60) days, a \$5,000.00 draw as well as commissions and bonuses.

The Plan was submitted as an exhibit by the employer.

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.

The claimant holds that the \$2,500 draw he was paid should be put against the \$8,000.00 per month guarantee stipulated in the Plan. Because he worked fifteen (15) days in November the claimant holds he is still owed the prorated value of \$8,000 or \$4,000.00 less the \$2,500 draw which he calculates to be \$1,500.00.

The employer contends that because the claimant worked one-half the month there is no monthly commission to settle-up against, therefore there's no way to determine what the claimant is owed of the \$8,000.00 guarantee, and further the sixty day guarantee termed three (3) days prior to his last day worked.

The employer's argument that the claimant is not due additional wages because he left employment in the middle of the month, and the provision of the employer's guarantee lapsed three (3) days prior to his departure, is not persuasive.

The Hearing Officer finds that a guarantee is just that, a guarantee. The Plan stipulates that the guarantee was in effect for sixty days and was to be prorated.

The guarantee included in The Plan lapsed November 11, 2017; sixty (60) days from its effective date of September 13, 2017. Prorating the \$8,000.00 guarantee per month (or \$16,000.00 per two (2) months) to a daily basis ($\$16,000.00 / 60 = \266.67) yields \$266.67 per day. Multiplying the prorated daily rate (\$266.67) by the remaining number of days in the guarantee (eleven (11)) yields a ($\$266.67 \times 11$) or \$2,933.33 balance of the guarantee. The claimant acknowledged receiving a \$2,500.00 draw for the period. The guarantee balance (\$2,933.33) less the draw (\$2,500.00) or ($\$2,933.33 - 2,500.00 = \433.33) leaves a balance due the claimant of \$433.33.

The Hearing officer finds the claimant proved by a preponderance of the evidence he is due additional wages in the amount of \$433.33.

DECISION AND ORDER

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that he has not been paid all wages due, it is hereby ruled that this Wage Claim is valid in the amount of \$433.33.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$433.33, less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

Date of Decision: March 2, 2018

Original: Claimant
Cc: Dan O'Brien Kia, 158 Manchester Street, Concord, NH 03301
Attention: Thomas Kuhn, General Manager,