

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

XCube Research & Development Inc. Mikael Taveniku,
Satish Jha and Shantanu Jha

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:42 V, personally liability of corporate officer/manager

Employer: XCube Research & Development Inc, 126 Marsh Rd, Pelham NH 03076
Mikael Taveniku, 126 Marsh Rd, Pelham NH 03076
Satish Jha, 18 Chatham Cir, Wellesley MA 02481
Shantanu Jha, 8521 Meadowlark Ln, Bethesda MD 20817

Date of Hearing: April 12, 2018

Case No.: 56555

BACKGROUND AND STATEMENT OF THE ISSUES

This Department originally scheduled a hearing for February 7, 2018. At that hearing, claimant's counsel attempted to add personal liability for Mikael Taveniku, Satish Jha and Shantanu Jha, however, they were barred from doing so under Lab 204.02. The claimant requested a continuance which was granted. This hearing follows.

At the beginning of the hearing, claimant's counsel attempted to add RSA 275:44 IV as an issue for the hearing. This request was denied pursuant to Lab 204.02, as counsel was specifically instructed in the February 7, 2018, hearing. Counsel's argument that the Hearing Officer is free to find for liquidated damages is misguided and incorrect. As such, RSA 275:44 IV was not added to this claim.

The claimant asserts she is owed \$20,715 in unpaid wages, \$1,250 in unpaid vacation pay and \$205 in unpaid employee expenses.

The employer agreed the claimant is "absolutely due what she is asking for."

Mikael Taveniku, Satish Jha and Shantanu Jha all denied personal liability and each accused the others of having control of the company.

FINDINGS OF FACT

The claimant worked for the employer on an hourly basis as a part time receptionist until January 30, 2017, when she began a full time salary position as a Corporate Business Manager. She continued this position until she resigned on July 21, 2017. She received a semi-monthly salary of \$3,125, gross.

The claimant worked each of the pay periods of January 30, 2017 through July 21, 2017, and did not regularly receive her salary for each pay period, leaving a balance of \$20,715, which she alleges is now due. She also seeks \$205 in unpaid employee expenses and \$1,250 in unpaid vacation pay.

The employer agreed the claimant is “absolutely due what she is asking for.”

Satish Jha argued the claimant was only due wages for hours worked at the part time hourly rate basis, not the salaried basis.

Shantanu Jha stated he did not know whether the claimant was paid or what she should receive.

With the agreement of the employer, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed salary/wages in the amount of \$20,715, unpaid expenses of \$205, and unpaid vacation pay of \$1,250.

She seeks to hold Mikael Taveniku, Satish Jha and Shantanu Jha personally liable for the liquidated damages as she claims they had control of the company and chose not to pay him.

Mikael Taveniku denies personal liability as he did not have control of the company during the claimant’s employment. He alleges Satish Jha had control of the company.

Satish Jha denies personal liability as he did not have control of the company during the claimant’s employment. He alleges Mikael Taveniku had control of the company.

Shantanu Jha argues he was never added as a vice-president in the minutes of the Board meeting nor was he her supervisor, so he is not responsible.

RSA 275:42 V For the purposes of this subdivision the officers of a corporation and any agents having the management of such corporation who knowingly permit the corporation to violate the provisions of RSA 275:43, 44 shall be deemed to be the employers of the employees of the corporation.

The claimant did not present credible or persuasive testimony or evidence that Mikael Taveniku, Satish Jha or Shantanu Jha should be held personally responsible for claim.

Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that Mikael Taveniku, Satish Jha or Shantanu Jha are held personally liable for the claim.

The claimant attempted to add RSA 275:44 IV within fourteen days of the date of today's hearing. As this request violated Lab 204.02, this request was denied.

The claimant had a previous hearing on this claim with this Department at which she was notified Lab 204.02 to add additional issues to the claim. The claimant was allowed a continuance at that hearing to add RSA 275:42 V for today's hearing. She cannot reasonably or credibly argue she was not aware of Lab 204.02 in attempting to add RSA 275:44 IV for this hearing and she was represented by counsel.

The claimant is advised that future claims regarding the same "cause of action", arising out of the same factual transaction, are barred under the doctrine of res judicata under University of N.H. v. April 115 N.H. 576 (1975), which states that a judgment on the merits is conclusive upon the parties "both as to what was actually litigated and as to everything that might have been litigated", thereby extinguishing the claimant's rights to remedies.

DECISION AND ORDER

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 requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all wages/salary due, it is hereby ruled that the Wage Claim is valid in the amount of \$20,715.

As RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she is due the claimed vacation pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,250.

As RSA 275:43 V considers employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she is due the claimed employee expenses, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$205.

As this Department finds that the claimant failed to prove by a preponderance of the evidence that Mikael Taveniku, Satish Jha or Shantanu Jha knowingly permitted the company to violate the provisions of RSA 275:43, 44, it is hereby ruled that these individuals were not the employer of the claimant, under RSA 275:42 V.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$22,170 (\$20,715 + \$1,250 + \$205), less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey

Hearing Officer

Date of Decision: April 26, 2018

Original: Claimant
cc: Employer

MJD/nm