

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Dental Services Group

DECISION OF THE HEARING OFFICER

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

Employer: Dental Services Group, 5775 Wayzata Blvd Ste 890, Minneapolis MN 55416

Date of Hearing: April 11, 2018

Case No.: 56624

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$39,000 in unpaid bonus.

The employer denies the claimant is due any bonus as the notice states that he is eligible for a management bonus, not that any bonus is guaranteed.

FINDINGS OF FACT

The claimant worked for the employer as Area Vice President of Sales East, from January 2, 2017 through December 8, 2017, when he resigned. Upon hire, the claimant received a December 9, 2016, offer letter which outlined his salary and benefits. In particular, the letter notices the claimant that "You will be eligible for a \$500 a month car allowance and a 30% *management bonus [the * refers to any bonus having a downward adjustment pending a company transformation].

The claimant argues he is due the 30% management bonus because he received the monthly car allowance, even though the offer letter says he is "eligible". He claims he repeatedly asked how the bonus program worked and how he would be able to get it and was put off by the employer.

The employer argues the claimant was eligible for bonus but did not meet the requirements in the previously submitted documents for the bonus program. In fact, no bonuses were paid out for 2017 to any Vice Presidents as none of the company performance targets were hit.

The claimant denies receiving a copy of the submitted bonus structure and further argues that it would not apply to him as he was field staff, not senior staff.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including bonus, at the time of hire and II upon any changes. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and (c) prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer noticed the claimant that he would be eligible for a 30% management bonus. That offer letter notices the claimant is he “eligible” for a management bonus, not that he is entitled or guaranteed a bonus.

The claimant provided credible testimony that he did not receive any written bonus policy. The employer agrees they do not have a written acknowledgement from the claimant for the bonus plan.

The claimant’s argument that he received a monthly car allowance which was similarly termed as “eligible” not guaranteed, in the offer letter is not found to be a persuasive argument that the employer is required to pay any bonus.

The claimant cited International Business Machines Corporation v. Khoury, 177 A.3d NH 724 (2017) as a similar case in which wages were awarded. This instant claim differs as the cited case discussed commissions, not bonus and that the properly noticed written commission plan was changed by the employer after the commission period had ended, in contravention of RSA 275:49 and Lab 803.03 (a) and (c).

The employer provided credible and persuasive testimony that the bonus program previously submitted did apply to the claimant and that none of the Vice President who also worked under this same plan received any bonus as the company performance targets were not met.

Even if the written bonus program did not apply to the claimant, the offer letter does not provide a requirement for the payment of any bonus to the claimant.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed bonus under the written policy of the employer.

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 he is owed the claimed wages/bonus, it is hereby ruled that the Wage Claim is invalid.

██████████
Hearing Officer

Date of Decision: May 2, 2018

Original: Claimant
cc: Employer

