

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

US Foods Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: US Foods Inc, 100 Ledge Rd, Seabrook NH 03874

Date of Hearing: April 2, 2018

Case No.: 56785

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$2,316.80 in unpaid salary as he worked one day into a two week pay period and only received wages for the one day worked.

The employer sent a check to the Department in the amount of \$1,024.40, which the employer representative stated was not payment towards the wages claimed, but his portion of an annual incentive.

The employer denies the claimant is due any further wages as he was notified of the layoff prior to its effective date and they paid him for the one day worked into the new pay period. They argue the one day he came into the office was only to sign paperwork.

FINDINGS OF FACT

The claimant worked for the employer through May 15, 2017, when he was laid off from employment. He was a salaried employee earning \$2,574.22 for a bi-weekly pay period. May 15, 2017 represents the first day of a biweekly pay period. The employer paid the claimant a prorated salary for one day. He seeks the balance of \$2,316.80.

The claimant argues he entitled to the full salary.

The employer argues the claimant only worked on May 15, 2017, to sign paperwork, including a severance agreement.

The parties executed a severance agreement on May 15, 2017, which granted the claimant \$20,593.78 in a lump sum payment and also included a general release of claim.

The properly executed severance agreement notwithstanding, RSA 275:50 prohibits a waiver of an employee's rights under RSA 275 Protective Legislation.

RSA 275:50 Waiver Prohibited. –

I. Except as provided in RSA 275:53, no provision of this subdivision may in any way be contravened or set aside by private agreement.

II. Except as provided in RSA 279, an employer and employee may not enter into any agreement, whether written, oral or other, that work may be performed for less than the applicable minimum wage.

Therefore, this claim continues.

RSA 275:43-b requires that an employer pay a salaried employee their full salary for any pay period in which the employee performs any work. It also allows employers to make deductions to a salaried employee's wages under certain circumstances, but none of those exceptions apply to the facts of this case.

The claimant provided credible testimony that he did perform work for the benefit of the employer on May 15, 2017, other than signing the severance agreement.

The employer's argument that the employee's appearance on May 15, 2017, was to sign paperwork only is not persuasive, as the severance agreement outlines that the final day of employment is May 15, 2017.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the balance of the claimed salary in the amount of \$2,316.80

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 he was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$2,316.80.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$2,316.80, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 19, 2018

Original: Claimant
cc: Employer

MJD/nm