

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Surge Resources II Inc and North Point Management LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I withholding of wages

Employer: Surge Resources II Inc, 300 Hanover St, Manchester NH 03104
North Point Management LLC, 55 Lake St #5, Nashua NH 03060

Date of Hearing: April 9, 2018

Case No.: 56809

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$601 in unpaid wages which the employer illegally withheld from her final wages for a repayment of \$459 of tuition reimbursement and \$142 membership fee required for the class.

Surge Resources II Inc and North Point Management LLC argue the deduction was allowable as it was outlined in the employee handbook, which was available on the HR Connect portal where she was able to view her pay stubs.

FINDINGS OF FACT

The claimant worked for the client company of North Point Management LLC which leased employees through Surge Resources II Inc for all relevant periods of this claim.

The claimant had \$459 and \$142 from her final paycheck for a tuition reimbursement and the associated membership fee as she did not complete the requirements in the employee handbook. She seeks these wages as due as she did not see the addendum for the tuition policy in the handbook.

Surge Resources II Inc and North Point Management LLC argue the tuition policy was located on the HR Connect portal for her review. They acknowledged they did not have a written acknowledgment from the claimant for the addendum to the tuition policy nor did they have any signed documentation from the claimant authorizing deductions from her check for tuition reimbursement.

RSA 275:48 I (b)(12) allows an employer to make mutually agreeable deductions to the claimant's wages with proper written authorization.

RSA 275:48 I (d)(5) allows an employer to make deductions from an employee's wages for non-required tuition reimbursements.

The employer did not have a written authorization from the claimant under either statute. The employer did not have the proper authorization to make any deductions from the claimant's wages as required by RSA 275:48.

Even if the employer did have a written acknowledgement for the tuition addendum to the policy, it would not suffice under the above statutes.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed wages in the amount of \$601.

Now the Department must determine which entity is the employer of the claimant for the purposes of paying wages to employees.

RSA 277-B:9 deems employee leasing to be co-employment between the employee leasing company and the client company.

RSA 277-B:9 Employee Leasing Deemed Co-Employment. – An employee leasing company and a client company shall be deemed co-employers and shall divide employment responsibilities as follows:

I. An employee leasing company shall be solely responsible for:

(a) Paying wages to leased employees. The employee leasing company may rely on initial hiring documentation of wages, ongoing pay change documentation, and reported payroll documentation regarding hours worked or other measured unit of employee compensation received from the client company. An employee leasing company shall not knowingly rely on materially inaccurate information provided under this paragraph.

And:

II. A client company shall be solely responsible for:

(d) Providing accurate personnel and payroll information, and a record of hours and wages to the employee leasing company and department of labor when requested, as a co-employer on all leased employees as required of employers under RSA 279:27. Notification shall be made in compliance with the signed notice as required by rules adopted by the department.

(e) Complying with all wage and hour laws, including recordkeeping requirements and determinations of exempt and non-exempt status.

Pursuant to RSA 277-B:9 II (e) requires the client company to comply with all wage and hour laws. Section (d) requires the client company to provide accurate payroll information.

It is not clear whether North Point Management LLC did not provide accurate payroll information to Surge Resources II Inc to process the payroll or that Surge Resources II Inc did not pay all wages due.

Therefore, Surge Resources II Inc and North Point Management LLC are found to be jointly and severally liable for the payment of wages in this case.

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 275:48 I allows an employer make deductions from wages due an employee with proper authorization, and as this Department finds that the employer failed to obtain the proper authorization for the deduction for the tuition reimbursement and associated fees, it is hereby ruled that the Wage Claim is valid in the amount of \$601.

Surge Resources II Inc and North Point Management LLC are jointly and severally liable and are hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$601, 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