

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

NH Exteriors Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:44 IV liquidated damages

Employer: NH Exteriors Inc, 50 Pinewood Rd, Washington Building, Allentown NH
03275

Date of Hearing: June 4, 2018

Case No.: 57092

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$666.48 in unpaid wages for two days during two separate pay periods in which the employer failed to pay his full salary.

The employer denies the claimant is due payment for either day as he did not follow the written policy of the employer.

FINDINGS OF FACT

The claimant worked for the employer from 1992 sporadically until 2011, when he became their full time telemarketing manager as a salaried employee.

Neither party disputes the claimant was a salaried employee.

The claimant argues he was not paid for December 23, 2017, because he closed the office due to bad weather and December 30, 2017, when he was sick.

There is no dispute the claimant worked the balance of his regular schedule both weeks.

The employer argues the claimant did not have the authorization to close the office on December 23, 2017. Further, he called in sick on December 30, 2017, and the written policy notified him he would not be paid under these circumstances. His assistant, who is an hourly employee, also did not receive payment for those same two days.

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.

Because none of the exceptions under RSA 275:43-b apply to the facts of this case, the employer is precluded from deducting wages. Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed salary in the amount of \$666.48.

The claimant seeks liquidated damages on these wages.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".


The Hearing Officer finds the employer's argument that they held a genuine belief the wages were not due pursuant to their written policy, persuasive. Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due because the employer had a genuine belief that the wages were not owed.

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 \$666.48.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$666.48, less any applicable taxes, within 20 days of the date of this Order.


Hearing Officer

Date of Decision: June 12, 2018

Original: Claimant
cc: Employer