

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Kehoe Component Sales Inc

DECISION OF THE HEARING OFFICER

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

Employer: Kehoe Component Sales Inc, 34 Foley Dr, Sodus NY 14551

Date of Hearing: July 10, 2018

Case No.: 57122

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$961.54 in unpaid salary for March 19 through March 23, 2018 and \$19.95 in expenses for the packaging of his laptop and equipment to return to the employer.

The employer denies the claimant is due any salary as he did not perform any work March 19 through March 23, 2018. The claimant knew his last day of employment was March 16, 2018. Further, the employer provided a UPS account number for the shipping therefore he should not have incurred any expenses.

FINDINGS OF FACT

The claimant worked for the employer from as a salaried employee. He received a weekly salary of \$961.54 gross. He provided a two week notice on March 12, 2018, with an expected final day of March 26, 2018.

The parties agree the employer noticed the claimant he did not have to work out the notice. The employer said they would do an exit interview, but this did not come to fruition.

The claimant argues that he was available to work and since no exit interview was scheduled, he should be paid for March 19 through March 23, 2018. Further, he did have contact with a potential customer during that week.

The employer argues the claimant was well aware his last day was March 16, 2018. They argue he performed no work during that week. The customer contact the claimant refers to happened well after March 23, 2018.

RSA 275:43-b Payment of Salaried Employees. –

I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

(a) Any pay period in which such employee performs no work.

(b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.

(c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.

(d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.

(e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

The claimant's argument that he was ready and available to work the week ending March 23, 2018, is not persuasive. This is not the criteria set forth in RSA 275:43-b. His argument that he had contact with a customer is not persuasive on its face as he did not present any documentation to show this contact occurred.

Because the claimant was not persuasive in his testimony that he performed any work for the week of March 19 through March 23, 2018, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed salary pursuant to RSA 275:43-b I (a).

The claimant argues he is due \$19.95 in unpaid employee expenses for the packaging of his laptop and equipment to return to the employer. He used a service to package the laptop as he wanted to ensure no damage to the laptop. This expense is not for the mailing of the package, for which he used the employer's UPS account.

The employer argues the claimant has use of their UPS number and should not have incurred any charges.

RSA 275:57 Reimbursement of Employee Expenses. –

I. An employee who incurs expenses in connection with his or her employment and at the request of the employer, except those expenses normally borne by the employee as a precondition of employment, which are not paid for by wages, cash advance, or other

means from the employer, shall be reimbursed for the payment of the expenses within 30 days of the presentation by the employee of proof of payment.

The employer instructed the claimant to return his laptop and equipment to them via UPS, for which he provided an account for the payment of the shipment. Presumably, the employer wanted the items to be safe and secure during shipment for use after their return. Therefore, the Hearing Officer finds the \$19.95 is an reimbursable employee expense under RSA 275:57 I.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed unpaid employee expense in the amount of \$19.95.

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 failed to prove 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 invalid.

As RSA 275:43 V considers the payment of 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 he was not paid all employee expenses due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$19.95.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$19.95, less any applicable taxes, within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: July 12, 2018

Original: Claimant
cc: Employer