

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Peters Honda of Nashua

DECISION OF THE HEARING OFFICER

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

Date of Hearing: November 6, 2018

Case No.: 57896

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$540 in unpaid bonus for January 2016; \$2,052.81 in unpaid bonus for February 2016; and \$2,170 in unpaid minimum salary.

The employer denies the claimant is due any bonus as the bonus was paid through a draw system, and his final balance resulted in a negative balance, which they did not seek to recover from him.

Further, his position as service advisor is exempt from minimum wage under Federal Regulation.

FINDINGS OF FACT

The claimant worked for the employer from November 2015 through February 5, 2016, as a Service Advisor.

The claimant argues the New Hampshire Department of Labor uses the Federal Minimum Wage for minimum wage for hourly employees and because there is no default for minimum wage in the salary statute, the Department is required to use the Federal Minimum Wage.

He also argues that the bonus is due pursuant to the employer's own calculation.

The employer argues that the claimant earned \$2,902.50 in bonus for January 2016, but took a draw of \$1,950, which subtracted from the total leaves \$952.20, which he was paid on February 5, 2016. The claimant earned \$320.05 in bonus for February 2016, but took a draw of \$450, which subtracted from the total leaves a negative balance.

They further argue the claimant is exempt from the minimum wage under Federal Regulation and cited *Encino Motorcars LLC v Navarro*, [2018] 16-1362 US Supreme Court which also upheld the exemptions from salary minimums.

The New Hampshire Department of Labor specifically adopts the Federal Minimum Wage under RSA 279:21 for hourly employees. There are no statutes or rules which adopt any federal minimums for salaried employees. Therefore, RSA 275:43-b stands alone, and bears no default to any other jurisdiction.

The employer's calculations show the bonus earned by the claimant and payments made to the claimant pursuant to their draw arrangement. As such, no further bonus payments are due to the claimant.

CONCLUSIONS


As this Department does not have any minimum amount to be paid to a salaried employee nor does it adopt any federal guidelines, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence he is due the claimed salary.

Because the claimant was paid all bonus due under the draw arrangement, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence he is due the claimed bonus.

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 bonus, it is hereby ruled that this portion of the Wage Claim is invalid.

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.


Hearing Officer

Date of Decision: November 16, 2018

Original: Claimant
cc: Employer