

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

CS Berlin Ops, Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I Unpaid Wages
RSA 275:43 V Unpaid Bonus

Claimant: 

Employer: CS Berlin Ops, Inc.

Date of Hearing: December 6, 2018

Case No.: 57958

BACKGROUND AND STATEMENT OF THE ISSUES

The respondent is a New Hampshire energy supplier currently providing operations and maintenance at the former pulp mill in Berlin, NH, now a biomass energy plant.¹ The claimant worked for many years at the same location for numerous entities. He asserts he is owed bonus pay from the respondent in the amount of \$7,128.26.

On this basis the claimant filed a Wage Claim with the Department on October 4, 2018, a Notice of Wage Claim was sent to the employer on October 5, 2018. The employer's objection to the wage claim was received by the Department on October 15, 2018; on October 16, 2018 a Notice of Employer's Objection was sent to the claimant. The Department received the claimant's request for a Hearing on October 25, 2018. Notices of Hearing were sent to the parties on November 9, 2018. Accordingly, a Hearing was held at the Department on December 6, 2018.

FINDINGS OF FACT

On July 19, 2013 the claimant received, and accepted, an offer as compliance manager from DPS Berlin, LLC located at the former mill.

The claimant was employed by at least seven (7) different owners of the former mill.

The claimant testified he retired from Burgess Biopower, Berlin Station on January 31, 2017

Effective June 12, 2017 the respondent was hired to provide operations and maintenance services at the former mill, now a biomass energy plant.

There was no wage statement from the named employer, tax form or other document presented to demonstrate the claimant was an employee of the respondent.

On October 4, 2017 the respondent notified employees, that if they were eligible, they would be receiving an annual incentive bonus.

DISCUSSION

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

There is no New Hampshire Labor Law that currently exists that requires employers to offer bonuses (or any other benefit) to employees. However, if a bonus (or any other benefit) is offered, the employer is required to comply with RSA 275:49. This statute reads in-part: "III. Make available to his or her employees in writing or through a posted notice maintained in a place accessible to his or her employees employment practices and policies with regard to ...and other fringe benefits;" and with Lab 803.03 (b) which reads in-part: "Every employer shall provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employee's expenses, pension and all other fringe benefits per RSA 275:49."

Consistent with RSA 275:49, the plant manager forwarded correspondence to employees on October 4, 2017 that, for those eligible, a bonus would be paid-out based upon the company's performance in 2016. The subject of the correspondence is "Annual Incentive."

The claimant received this mailing. This correspondence from the plant manager states in-part: "I am proud to announce the distribution of bonuses to all qualified and current employees during the 2016 calendar year. Bonuses will be distributed on October 5th."

RSA 275:43 V states in-part that a bonus, when such a benefit is a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III. A bonus only becomes wages "when due." "When due" is a reference to the relevant contingencies specified in the employer's policy; in this case the relevant contingencies are stated in the October 4, 2017 annual incentive notice from the plant manager.

Although the claimant received this correspondence, he was not then a *current employee* as required in the October 4, 2017 annual incentive notice from the plant manager; the claimant retired on January 31, 2017.

This Hearing Officer finds the claimant did not meet the respondent's requirements in order to be eligible for the claimed bonus and thus did not prove by a preponderance of evidence that he is due the bonus he claims.

The claimant testified that on January 31, 2017 he retired from "Burgess Biopower, Berlin Station." The respondent assumed operations and maintenance of the plant on June 12, 2017. The respondent did not have the opportunity to direct, or pay the claimant, and as such was not the claimant's employer as described in RSA 275:4 II.

For arguments sake, even if the claimant was an employee of the respondent, he would have been ineligible to receive the bonus; he would not have been a current employee as required. The claimant was in retirement at the time.

This Hearing Officer finds the claimant failed to establish the existence of an employer-employee relationship with the respondent.

DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:43 V regards a bonus to be wages when due and as RSA 275:4 II requires an individual to be directed and paid by an entity to be considered their employee and as this Department finds the claimant did not prove by a preponderance of evidence he is owed a bonus from the respondent, it is hereby ruled that this Wage Claim is invalid.

Date of Decision: December 26, 2018

Original: Claimant
cc: Employer

XXX/xxx