

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

[REDACTED]

v.

**High Energy Ozone, LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I - Weekly, Unpaid Wages, Bonus

**Claimant:** [REDACTED]

**Employer:** High Energy Ozone, LLC

**Date of Hearing:** December 10, 2018

**Case No.:** 58030

**BACKGROUND AND STATEMENT OF THE ISSUES**

The current issue concerns the employer's alleged failure to pay a promised bonus in the amount of \$1,500.00. The employer disputes they promised a bonus to the claimant.

On this basis the claimant filed a Wage Claim with the Department on October 12, 2018, a Notice of Wage Claim was forwarded to the employer on October 15, 2018. With no response from the employer Hearing notices were forwarded to the parties on November 16, 2018. Accordingly, a Hearing was held at the Department on December 10, 2018

**FINDINGS OF FACT**

The employer is a manufacturer of trademarked cleaning equipment. The claimant was a sales representative for the employer. He earned \$45,000.00 per year plus commissions.

The claimant testified he worked for the company from September 4, 2017 through June 28, 2018.

The claimant testified that in April 2018, at a sales meeting, the employer informed employees the company was experiencing financial difficulties and requested employees to accept postponing receiving their pay, and that the employer offered employees a bonus if they stayed on with the company. Under cross examination the claimant testified this discussion occurred before the sales meeting.

No signed document regarding a bonus was presented for the Hearing. The parties disagree that a discussion ever took place concerning the bonus.

The claimant testified he was laid off in June 2018.

The claimant testified he previously filed a Wage Claim with the Department for wages and vacation time; the claimant testified those issues are settled. The current issue of a bonus was not discussed either through the previous claim or the related Hearing.

### **DISCUSSION AND CONCLUSIONS**

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.

The employer argued that because the claimant's prior claims came under RSA 275:43 I the claimant is precluded from making any additional claims under the same statute. This is incorrect; the issue of a claimed bonus by the claimant was not addressed either through the previous claim or related Hearing.

RSA 275:43 I requires all employers to pay all wages due an employee on regular paydays identified in advance. The claimant describes an alleged event whereby the employer offered him a bonus in exchange for the payment of his wages at a later date. No matter what the alleged arrangement is called, a bonus, a fee, etc., paying an employee to wait for their wages violates this statute.

Even if the claimant agreed to such an arrangement, and this Hearing Officer is not determining if such an agreement existed or not, it would still be unlawful. RSA 275:50 states clearly, and in-part, "...no provision of this subdivision may in any way be contravened or set aside by private agreement." The claimant cannot waive the provisions of RSA 275:43 I that prohibits the type of pay arrangement he describes.

There is no New Hampshire labor law that provides a means by which the claimant would be entitled to the bonus he describes in his claim.

Therefore, this Hearing Officer finds the claimant was unable to prove by a preponderance of evidence he is owed wages in the form of a bonus in the amount of \$1,500.00.

## DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee, on time, on paydays designated in advance and as this Department finds the claimant was unable to prove by a preponderance of evidence that he is due the bonus of \$1,500.00 he claims, it is hereby ruled that this Wage Claim is invalid.

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[REDACTED]  
Hearing Officer

Date of Decision: January 3, 2019

Original:            Claimant  
cc:                    Employer

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