

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

New World Water & Advanced Technologies, LLC.

Case No. 102533

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] claimant, videoconference

Sanford Meekins and Ellen Meekins, employer

Ricardo Velez-McCaskey, employer's witness

Nature of Dispute: RSA 275:43 I – Weekly, Unpaid Wages
RSA 275:43 I - Weekly, Unpaid Bonus
RSA 275:44 IV – Employees Separated from Payroll Before Pay Days,
Liquidated Damages

Date of Hearing: July 18, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all wages due in a timely manner as required under New Hampshire law. Specifically, the claimant filed a Wage Claim with the Department March 31, 2022, asserting unpaid wages in the amount of \$31,325.30 and a \$30,000.00 bonus. The claimant also seeks liquidated damages in the amount of \$38,674.70 on the unpaid wages.

The wage claim notice was issued June 3, 2022. The employer filed a response June 13, 2022. The Notice of Hearing issued June 24, 2022.

Contained in the evidence submitted by the claimant was evidence of two prior convictions for Sanford (Sam) Meekins. The convictions are for wire fraud. Mr. Meekins was sentenced to prison for these convictions. There are additional documents from 2014 and 2020 that discuss the terms and conditions of Mr. Meekins supervised release. During the course of testimony the employer objected as to the submission of these documents. The objection was overruled. The documents were allowed into evidence to impeach the credibility of the employer and its principals and not for the truth of the matter contained within. This ruling is consistent with the rules of evidence adopted by the New Hampshire Supreme Court. *See Rule 609*

FINDINGS OF FACT

The employer is a limited liability corporation based in Exeter, New Hampshire. The claimant worked for the employer from May 6, 2021 to July 22, 2021. The claimant was employed as the Director of Outside Sales Systems Engineering for New World Water & Advanced Technologies, LLC. (NWWAT). The April 23, 2021 employment offer specifically mentions a \$150,000.00 annual salary, bonuses and benefits.

The offer required the claimant to submit a copy of his resume, passport, license and Social Security card. The offer also required the claimant to sign a non-circumvention and non-disclosure agreement. The last paragraph of the signed employment offer reads,

“Should you decide to accept your NEW position as Director of Outside Sales Systems Engineering, your first day of employment will begin as soon as you can finish up with your current employer giving them proper separation notice”.

The claimant testified that the signed employment offer in evidence was the only documentation of his employment agreement with the employer. The claimant testified that he was not asked to sign any other employment contract or agreement and that he was never told or had reason to believe the employer lacked an ability to pay wages. The claimant left his job with IBM to accept the employer's offer.

The claimant testified that, according to the signed employment offer, his first day was to be May 31, 2021. However, the testimony and documentary evidence indicate the claimant began work on May 6, 2021 by participating in a four hour meeting with the employer's principal members. The claimant's e-mail and Salesforce accounts were activated that day by the employer.

The claimant returned the signed employment offer on May 6, 2021. The same day, Patrick Delaney, the chief operating officer for NWW&AT, wrote variously in several e-mails,

“Hi ██████████

We are THRILLED to have you on board.... Denis will have a GateStor email for you available; it will already be active in our Salesforce CRM for your seat... We have placed a large order for Sharp Aquos Boards, laptops, printer, scanner, fax, etc (sic) so we will have all that for you. In addition, you will have an Iphone 12 and a JetPack MiFi hotspot all through Verizon wireless.”

The claimant testified that the employer never paid salary during his tenure. The documentary evidence includes emails in which the employer acknowledges the claimant's work performance, his salary, the employer's failure to pay wages and the employer's promises to pay.

For example, on June 17, 2021 the claimant asked the employer when payroll would start and requested a meeting with the employer's human resources department about completing a W-4 form and accessing benefits. Mr. Meekins responded the same day,

“Hi ██████████

I haven't heard anything yet from HR, I understand everything should be ready for next Friday, June 25th.”

The claimant's wage claim and testimony were that the employer offered a \$30,000.00 bonus to those employees willing to stay on until anticipated venture funds were received. Although there is no written documentation of such an offer, the employers testified at hearing that they did offer a 20% bonus, or \$30,000.00, to the claimant for that reason.

The testimony and evidence from both parties indicates that NWW&AT was intertwined with a company named GateStor, whose principals appear to be Ricardo Velez-McCaskey, founder and CEO, who was present at the hearing, and Denis Emond, GateStor president of sales support and technology, who recruited the claimant to NWW&AT and acted as an intermediary of sorts between the claimant and the employer. In testimony the employers claimed to be in the process of purchasing GateStor from Ricardo Velez-McCaskey.

On July 21, 2021 a text message from Denis Emond to the claimant reads,

"Just spoke with Ellen...she sounded confident that any day they should hear very soon...will let everyone know the moment they receive their confirmation call of date of money being released."

On July 22, 2021, the claimant asked Dennis Emond for an update. Denis Emond responded via text,

"Sam Meekins just instructed Ricardo and I to shut down GateStor sales team effective 5PM Today (sic)..7/22/21.

Was additionally indicated that as soon as the 2.5 Billion (sic) is secure in Sam and Ellen's account that everyone will be contacted and salary monies owed will be paid...at which time determination will be made with each individual if they wish to come back to GateStor as full-time employees."

The claimant testified that the first time he was aware there was a funding issue was during the June 17, 2021 e-mail exchange with the employer.

On July 30, 2021 the claimant e-mailed the employer as follows:

"Good afternoon Sam and Ellen,

I don't mean to pester (I'm sure y'all have been getting enough of that). However, I must ask if there has been any update or progress on receiving the money need (sic) to make payroll? I'm coming to a decision point where I will need to accept employment elsewhere in order to pay my bills and would like to avoid this scenario if possible."

There is no response from the employer in the file.

The claimant testified that he worked from the employer from May 6, 2021 to July 22, 2021, a total of 11 weeks. His weekly salary should have been \$2,884.62. Eleven weeks at \$2,884.62 equals \$31,730.82. He was promised a bonus of \$30,000.00.

The employers' June 13, 2022 response to the wage claim indicates that Mrs. Meekins is the managing director of NWW&AT and Mr. Meekins is the director of strategic planning. Mrs. Meekins testified that she is primarily in charge and that she and her husband Sam Meekins began the business before the "covid pandemic". It was established to sell advanced technology hardware and software. They were introduced to the claimant prior to April 23, 2021. They were introduced to him by Denis Emond.

The employer testified that the claimant had not begun his employment relationship with the employer. The employer acknowledged that the offer was made, the emails were exchanged. However, the employer argued that official employment would not begin until funding was secured.

The first sentence of the employers' submission to the Department reads,

"Mr. ██████████ was never employed by New World Water & Advanced Technologies LLC, as we were looking to sell our financial instruments, and even after a year later, we have NOT sold them to date."

Further in the employers' submission it is noted,

"In preparation, NWW&AT also worked with an HR company to handle all employee payroll and benefits when we got funded, named Resource Management Inc.... Mr. ██████████ never signed a W-4 with RMI our proposed HR Company, because RMI was never given the green light to start!"

The employers argued that the employment offer was contingent upon funding and that the claimant was aware of that fact when he signed the employment offer. The employers' witness, Ricardo Velez-McCaskey, attempted to testify that the claimant was aware of the funding issue and that the claimant's employment was contingent upon NWWAT receiving venture funding to purchase GateStor.

The employer acknowledged owing the claimant the unpaid wages and bonus. The employer also testified that he would have paid the claimant if the venture funding had been received.

Contained in the evidence submitted by the claimant was evidence of two prior convictions for Sam Meekins. The convictions included a count of wire fraud in 1998 and a count of bank fraud in 2005. The employers argued that the convictions are not relevant to this case.

At this point the hearing was concluded.

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.

RSA 275:43 I requires that an employer pay all wages due an employee, on time, on paydays designated in advance. In this case, there is no question that the claimant was a salaried employee. The claimant and the employer agreed to a yearly salary of \$150,000.00. In exchange for this money, the claimant was not required to "clock in" or "clock out" at any certain time.

Having reviewed all the evidence and the arguments of the parties, the claimant's request for payment of owed wages is found valid. In making this determination the credibility of all parties was assessed. The claimant was found to be credible and had documentation to support his position. The employers were not credible. The employers' witness was not credible.

It is also clear from a review of the claimant's documentation, including the prior *convictions*, that the employer has a prior history of business dealings that included dishonesty.

There is no documentation in this case that the claimant's employment offer was contingent upon the employer receiving venture funding. It is impossible for the hearing officer to believe that such a fundamental contingency would be absent from such an employment offer if it were an issue, unless of course there was no intention to pay the claimant.

The employers' submission indicates that they have financial instruments to sell. The employers gave that as the primary reason the claimant was never employed by the employers. No description of the instruments or their value was offered by the employers. The employers gave no testimony to the reason they were unable to sell the financial instruments. Therefore, the employers had assets they could have used to pay wages.

The employers' submission and testimony indicated they had a HR company and legal counsel working for them. There was no indication in testimony that the employer's attorneys and HR company were not paid in full for their work on the venture. Therefore, the employers had the apparent ability to pay those entities rather than their employees such as the claimant.

The employers represented to the claimant that wages would be paid on Friday June 25, 2021. The employers testified that they offered the claimant 20% of his yearly salary as a bonus to induce the claimant to continue working without being paid. The employer's associate represented to the claimant on July 22, 2021 that the employers would be receiving 2.5 billion dollars and that money would be used to pay the claimant. This was done while informing the claimant he was being laid off, not terminated.

Having reviewed this evidence and the employers' response that indicates that other individuals are in the same position as the claimant, it is found that it is more probable than not that the employers made the claimant an employment offer and induced him to continue working with false promises of salary and bonus payments.

A salaried employee is entitled to his/her entire salary for a pay period unless he/she terminates his/her own employment or is terminated for cause by the employer. *See RSA 275:43- b (II)*. The claimant did not terminate his employment and was not terminated for cause. The evidence at hearing included emails, phone records, and other work product to indicate that the claimant was engaged in employment related activity for the employer from May 6, 2021 to July 22, 2022, a period of 11 weeks.

The claimant's weekly salary should have been \$2,884.62. Eleven weeks at \$2,884.62 equals \$31,730.82. The employer confirmed in testimony that he offered a \$30,000.00 bonus to the claimant. Therefore, the claimant is entitled to his unpaid salary from May 6, 2021 to July 22, 2021 in the amount of \$31,730.82 and the \$30,000.00 bonus.

The claimant seeks liquidated damages. However, the claimant seeks liquidated damages in the amount of \$38,674.70.

Under RSA 275:44 IV, "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such *employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues*

after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller;" (emphasis added).

An employer acts "willfully, if, having the financial ability to pay wages which he knows he owes, fails to pay them. The statute was not intended to impose liability where the employer's refusal to pay wages is based upon bona fide belief that he is not obligated to pay them. See *Ives v. Manchester Subaru, Inc.* 126 NH 796, 801 (1985).

The employer's offer of a bonus was an inducement to get the claimant to continue to work without pay. This was classic example of a willful violation. It was a voluntary act that did not proceed from mistake or inadvertence.

There is no evidence that the employer lacks the ability to pay wages other than the employers' testimony. The business is still in operation while the employer promised and failed to pay the claimant's wages in full. This was a conscious decision.

The employer's failure to pay the claimant's outstanding wages after his termination was a conscious decision. Given the facts in this case, the employer's defense that the claimant was not an employee and was not owed the wages and promised bonus is not based in a bona fide belief that the wages are not owed. After reviewing the evidence the opposite is found. Specifically, the employer understood the employment relationship with the claimant. The employer made promises to pay the claimant. The employer induced the claimant to stay when he was not being paid with a promise of a bonus. All these actions, taken together with the employer's prior history of untruthfulness warrants a finding that the employer's actions were knowing and in bad faith.

The claimant's testimony that he was not paid in a timely fashion as required is persuasive. The claimant was to be paid biweekly. The employer's June 17, 2021 e-mail to the claimant specifically acknowledges that the employer had not paid the claimant his salary in full at that time. The employer did not dispute the monies owed at any time in written documentation. Therefore, the employer did willfully and without good cause fail to pay the claimant within 72 hours as required under RSA 275:44 IV.

Regarding the question of liquidated damages on the wages, the employer failed to pay the claimant his wages and expenses within 72 hours as required. The claimant is entitled to 10% of owed wages for each day beyond 72 hours past termination, excluding Sundays. The claimant is entitled to an amount equivalent to the unpaid wages as liquidated damages because the employer willfully withheld payment from the claimant for more than ten days.

DECISION

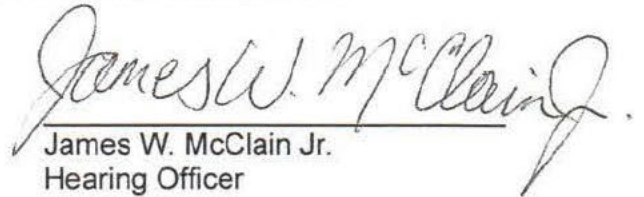
Based on the testimony and evidence presented, the Department finds the claimant met his burden to prove by a preponderance of evidence he is owed additional wages. The claimant is entitled to receive unpaid wages and bonus pay in the amount \$61,730.82.

Based on the testimony and evidence presented and as the hearing officer finds that the employer did willfully and without good cause fail to pay the claimant within 72 hours as required under RSA 275:44 IV, the Department finds the claimant was able to meet his burden to prove by a preponderance of evidence he is owed liquidated damages. The claimant is entitled to receive liquidated damages in the amount \$61,730.82.

It is hereby ruled that **this Wage Claim is valid.**

The employer is ordered to send two checks to this Department payable to ██████████
██████████ One check will be in the amount of \$61,730.82, less any applicable taxes, for the
unpaid wages and bonus. The second check will be in the amount of \$61,730.82 for liquidated
damages. No taxes/deductions shall be taken out of the liquidated damages check. Both
checks to be submitted to this Department within 30 days of the date of this order.

Date of Decision: August 10, 2022


James W. McClain Jr.
Hearing Officer

Original: Claimant
cc: Employer

JWM/nd