

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████

v.

FUJIFILM DIMATIX

CASE NO. 103039

DECISION OF THE HEARING OFFICER

Appearances: Claimant – ██████████
Employer, Karen Hebert Vice President, Human Resources and Sue Swenson, Human Resources Specialist

Nature of Dispute: RSA 275:43 I - Unpaid Bonus

Date of Hearing: August 30, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages he alleges are due. Specifically, the claimant asserts that he is owed a bonus in the amount of \$582.28.

This Wage Claim was filed with the Department on June 18, 2022. A Notice of Wage Claim was forwarded to the employer on July 18, 2022. The employer replied on July 27, 2022. The claimant requested a hearing on July 29, 2022. A hearing was scheduled by Notice sent to the parties on August 8, 2022. A formal hearing was conducted by telephone at the Department of Labor. All parties appeared. The claimant and the employer's representatives from Human Resources testified.

FINDINGS OF FACT

The following findings of fact are based on the parties' submissions, the witnesses' testimony and matters of record in the Department file.

Mr. ████████ became aware that the employer (Fuji) was aggressively hiring after losing many workers from the pandemic. He went to a job fair and provided the name of a Fuji employee (his mother) that referred him to apply there. He understood that if he worked at Fuji for six months, he would receive a bonus calculated by multiplying his income for six months times 2.5%.

Mr. ██████████ worked for exactly six months at Fuji, from August 23, 2021 until February 24, 2022. He testified that he resigned due to his relocation to Colorado. He provided his notice of his intent to separate from Fuji on February 15, 2022. Before leaving Mr. ██████████ had a separation interview with Human Resources Specialist Sue Swenson. He asked to have his bonus check for having worked six months mailed to him in Colorado.

Ms. Swenson testified that she told Mr. ██████████ that she would have to investigate whether or not he qualified for that bonus. Ms. Swenson then learned that on August 11, 2021, Mr. ██████████ was provided with an Employee Handbook and acknowledged that it was his responsibility to read and fully comply with it. The Handbook at page 26 states in pertinent part "...employees will not earn or be eligible to receive payment of a bonus if they have given notice of their intent to separate from employment with FUJIFILM Dimatix, Inc." The Handbook and acknowledgment were submitted as exhibits.

Therefore, Ms. Swenson concluded that although Mr. ██████████ worked at Fuji for six months, his Notice to Separate disqualified him from the bonus.

Vice President of Human Resources, Karen Hebert testified that this policy to disqualify employees from bonuses because they have given their separation notice has been enforced similarly in other cases. She also stated that this particular bonus requires employees to work the second or third shift for the entire six months. Although not applicable here, certain employees have been disqualified because although they continued working at Fuji, they changed shifts within the first six months of employment. It is the policy of Fuji to strictly enforce the contingencies required to qualify for bonuses.

The claimant argued that he was promised a bonus for six months of work. He held up his side of the bargain and the employer should be required to do the same and pay the bonus.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that he is owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

Claim for Bonus. A bonus award, when due, is considered part of wages, pursuant to RSA 275:42, III. "When due" is a reference to contingencies specified in the description of the employers' bonus plan that the employee needs to meet in order to be eligible for the bonus. It is the claimant's burden to prove that the employer offered him such a plan and that he met the contingencies entitling him to receive the bonus.

Here it is agreed that Mr. ██████████ was participating in a bonus plan entitling him to 2.5% of his earnings after six months employment. There is no dispute that Mr. ██████████ worked at Fuji for six months. However, based upon the Employee Handbook and acknowledgment, it is found that Mr. ██████████ knew or should have known that he would not receive payment of this bonus if he gave notice of his intent to separate from employment with FUJI.

Mr. ██████████ has not sustained his burden to prove that he met the contingencies entitling him to receive this bonus.

DECISION

Based on the testimony and evidence presented, this Department finds the claimant has not met his burden to prove by a preponderance of evidence that he is owed additional wages. The claim is respectfully, **DENIED**.

Such is the order of the Department:

September 12, 2022
Date of Decision



David I. Bailinson, Esq.
Hearing Officer

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