

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Cardi's Department Store, Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:44 IV liquidated damages

Date of Hearing: January 23, 2019

Case No.: 58145

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts the employer is liable for liquidated damages because they failed to pay her final hourly wages within seventy-two hours of her termination

The employer denies the claimant was not paid timely. Further, she was not due an hourly rate as her commissions covered minimum wage requirements.

FINDINGS OF FACT

The claimant was employed as a 100% commissioned sales person. If during any week she did not earn commissions sufficient to cover the required minimum wage, the employer ensured she received at least minimum wage for all hours worked.

The employer terminated the claimant's employment on October 20, 2018, for misconduct. She received her next pay check on the regularly scheduled payday of October 26, 2018, in the amount of \$1,156.05, gross. These wages were 100% commissions, not an hourly rate, pursuant to the submitted paystubs.

Pursuant to RSA 275:44 I, final wages are due to terminated employee within seventy-two hours, or in this case, October 23, 2018.

The employer did not pay the claimant's commissions in the timeframe specified in RSA 275:44 I because commissions must be calculated on particular criteria in order to be due. All relevant data was not available on or around the date of the claimant's termination to make those calculations in order to pay the commissions within the required timeframe.

The claimant continued to receive commission payments after the October 26, 2018, payment, on regularly scheduled paydays, and made no claim regarding those payments not being in accordance with RSA 275:44 I or any employer liability under RSA 275:44 IV.

DISCUSSION

The claimant contends that the October 26, 2018, wage payment was for an hourly rate, not commissions. She argues that these wages were paid three days later than the seventy-two hours allowed by RSA 275:44 I and the employer should be liable for \$231.21, or 10% of her total wages for two days (as Sundays are excluded from the calculation), in liquidated damages, pursuant to RSA 275:44 IV.

The employer argues they paid the claimant her regular commissions, not an hourly rate, on the regular commission cycle and regular pay day. Because in order to determine if commissions are due, all relevant sales, delivery and customer payment data must be available as contingent events must occur in order for the commissions to be calculated, due, and payable. The employer persuasively argues this process could not happen within the timeframe requirement.

In order for the claimant to prevail in a claim for liquidated damages, she must prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay her wages within allotted time frame provided in RSA 275:44 I.

Because the data for these sales was not available on her termination date and the calculations for commissions were not able to be processed on her termination date for payment within the required timeframe, the employer did not act willfully or without good cause in paying her three days later that allowed by statute as the information to calculate the commissions simply was not available.

RULINGS OF LAW

RSA 275:44 Employees Separated From Payroll Before Pay Days. –

I. Whenever an employer discharges an employee, the employer shall pay the employee's wages in full within 72 hours.

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; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

CONCLUSIONS

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay her final wages within the timeframe specified in RSA 275:44 I.

DECISION

Based on the testimony and evidence presented, as RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the Wage Claim for liquidated damages is invalid.


Hearing Officer

Date of Decision: February 19, 2019

Original: Claimant
cc: Employer