

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Fairfield Auto Group LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages
Interest

Date of Hearing: January 22, 2019

Case No.: 58180

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$2,503.43 in unpaid commissions for October 2018 and an undetermined amount of commissions for November 2018. He further seeks liquidated damages and interest.

The employer denies the claimant is due any further wages.

FINDINGS OF FACT

The claimant worked for the employer as a manager from 2016 through November 13, 2018, when the employer terminated his employment. He worked at the specific location from which he seeks commissions from April 18, 2018 through his termination.

The parties had a conversation regarding a change in the commission payments. The exact date and setting of this conversation is unknown. The content and context of the conversation and whether the exact change in the commission structure was known to the claimant prior to October 1, 2018, is also unknown.

The employer changed the claimant's commission payments from 5% to 3.5% effective for October 1, 2018, forward.

The claimant received a commission payment of 3.5% for October and November 2018, as evidenced in the October commission statement in the wage claim submission. The claimant did not submit any documentation regarding the November 2018 commission payment as he stated the employer did not provide it to him.

DISCUSSION

The claimant argues that the change of his commission structure for October and November 2018 from 5% to 3.5% was without his knowledge, consent or agreement prior to the effective date of the change. Because of this change, he now seeks \$2,503.43 for the 1.5% difference in unpaid commissions for October 2018 and an undetermined amount for November 2018.

He alleges that at the end of September 2018 the employer told him that there would be changes to the commission plan coming soon. He argues the employer verbally told him of the change in his commissions from 5% to 3.5% in early October 2018, after the effective date of October 1, 2018, of the change.

The employer agrees they did not reduce the change in commission structure to writing, however, they argue they had met with the claimant near the end of September 2018 to explain the change in commissions from 5% to 3.5%, because of the addition of a third manager. This change was to be effective beginning October 1, 2018. Further, they argue the claimant was aware of the change in commissions as he made several attempts to negotiate the change to 4%, rather than the 3.5% presented.

They argue he has been paid in full for the commission plan presented in September 2018, effective October 1, 2018 and nothing further is owed.

This case rests on whether the claimant was notified of the change in his rate of commission from 5% to 3.5% prior to October 1, 2018, the effective date of the change.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including any bonus, at the time of hire and II requires an employer to notify his or her employees of any changes in the arrangements specified above prior to the time of such changes. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer acknowledges they did not comply with Lab 803.03 because the change in the commission structure was not memorialized in writing. Even though the employer was not in compliance with the requirements of Lab 803.03 (a) and (f) (6) when they did not inform the claimant, in writing, of the reduction in his commission, this does not automatically guarantee the claimant his commission retroactively.

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he was not notified of the change in his commission structure prior to October 1, 2018, was not paid his commissions correctly, and subsequently that the commissions are due and owing. He did not meet that burden because he did not provide persuasive testimony or evidence to prove that he was unaware of the reduction in commission from 5% to 3.5% prior to October 1, 2018. The claimant, therefore, fails to prove that he is owed the claimed commissions.

Because no wages are found to be owed, no liquidated damages can be awarded.

Even if wages had been found to be due, the claim for liquidated damages would have failed.

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".

The employer persuasively argues that they paid the claimant all commissions they believed to be due. Because they held a genuine belief that the claimant was not due any further wages, liquidated damages would not be awarded as they would not have been found to have knowledge of the financial obligation.

CONCLUSIONS

As the claimant failed to present persuasive testimony and evidence that he was not notified of the change in his commission structure prior to October 1, 2018, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages/commissions.

Because no wages are found to be owed, no liquidated damages or interest can be awarded.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages/commissions, it is hereby ruled that this portion of the Wage Claim is invalid.

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 this portion of the Wage Claim is invalid.

[REDACTED]
Hearing Officer

Date of Decision: February 19, 2019

Original: Claimant
cc: Employer