

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

BWE LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:44 IV liquidated damages

Date of Hearing: February 4, 2019

Case No.: 58240

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her Wage Claim, that she was owed \$2,250 in unpaid wages which were due on December 18, 2015. She further sought that the employer should be liable for liquidated damages.

The employer denies they withheld any pay from the claimant. However, in response to the claim, the employer paid the claimed \$2,250 to the claimant.

The claimant chose to continue with the claim for liquidated damages.

FINDINGS OF FACT

The claimant worked for the employer as an inside sales manager from June 2, 2014, through December 14, 2015, when the employer terminated her employment for cause. December 14, 2015, was the first work day of the biweekly pay period.

The claimant was a salaried employee earning a biweekly salary of \$2,500, or \$65,000 annually.

On December 18, 2015, the employer issued the claimant a pay check containing one days' salary of \$250, as allowed under RSA 275:43-b II when an employee is terminated for cause, nine days of vacation pay of \$2,250, and \$5,000 in severance, gross, one day later than allowed by RSA 275:44 I.

The balance of the nine days of salary, or \$2,250, the claimant originally sought through this claim would not have been found to be due. She was a salaried employee who was terminated for cause and pursuant to RSA 275:43-b II, the employer is allowed to prorate her salary to the one day she worked.

The claimant received all wages to which she was entitled on December 18, 2015.

The claimant filed this wage claim for the balance of her biweekly salary on December 6, 2018, just days prior to the expiration of the statute of limitations under RSA 275:51 V.

The employer disputed the wages claimed, but paid the wages sought in full. They did not pay the liquidated damages portion of the claim.

The claimant presented no proof that the employer was aware of the requirements of RSA 275:44 I or that they subsequently willfully and without good cause failed to pay her wages timely, only that the wages were paid one day later than allowed under RSA 275:44 I.

DISCUSSION

The claimant seeks liquidated damages because she alleges her final wages were not paid within seventy two hours as required by RSA 275:44 I.

Because the \$2,250 in unpaid salary originally claimed would not have been found to be due to the claimant, the focus of liquidated damages claim is limited to the wages paid in the December 18, 2015, pay check. Therefore, the maximum in liquidated damages the employer could be held liable for would have been 10% of the \$2,500 in salary and vacation pay they paid on December 18, 2015, or \$250.

She presented no testimony or evidence that the employer was aware of the requirements of RSA 275:44 I or that they were willful and without good cause in failing to pay her wages timely, when they paid her wages one day later than the prescribed timeframe.


The claimant bears the burden to prove by a preponderance of the testimony and evidence that the employer willfully and without good cause failed to pay all her wages due within the prescribed timeframe. She did not present any proof to that end. As such, this claim for liquidated damages fails.

CONCLUSIONS

As the claimant failed to provide testimony or evidence to show that the employer willfully and without good cause failed to pay all wages due timely, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer should be held liable for liquidated damages.

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 is invalid.


Hearing Officer

Date of Decision: February 20, 2019

Original: Claimant
cc: Employer