

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

NCR Corp
Case No.: 58530

DECISION OF THE HEARING OFFICER

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

Date of Hearing: April 8, 2019

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his Wage Claim, that he is owed \$6,480.30 in unpaid salary, liquidated damages and interest.

At the hearing, he clarified he is seeking \$3,100.33 in unpaid salary, an equal amount of liquidated damages and interest.

The employer did not respond to the Notice of Wage Claim, nor did a representative attend the scheduled hearing.

FINDINGS OF FACT

The claimant worked for the employer as a Territory Manager Northeast, for approximately ten years until he was terminated on December 17, 2018. He was a salaried employee earning a biweekly salary of \$3,379.70.

He was a remote worker performing his work from home when he was not traveling to visit clients in the northeast.

The employer called a telephone conference on December 17, 2018, during which they terminated the claimant's employment, without cause, effective that day.

December 17, 2018, was the first day of the biweekly pay period.

The claimant received a direct deposit of \$59.08 net on January 4, 2019, the next regular pay day. He did not have access to his online pay stub, but believes this represents one day of pay after deductions.

The claimant reached out to David Flores and Brad Gordon of the employer's Human Resource Department regarding his wages, but did not receive a return contact.

The claimant acknowledged he did not believe that his payment was outside of the requirements of RSA 275:44 I out of "any animosity" on the part of the employer, but probably someone in Human Resources clicked the wrong button in their payroll software.

DISCUSSION AND CONCLUSIONS

The claimant has the burden to prove he is due the claimed wages of the remaining nine day balance of his biweekly salary of \$3,100.33.

RSA 275:43-b requires that a salaried employee receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked. The statute allows an employer to prorate an employee's salary in certain circumstances, but none of those instances apply to the facts of this case.

The claimant provided persuasive testimony that he was not terminated for cause, and received only one day of his biweekly salary.

The employer failed to appear with testimony or evidence to refute that of the claimant.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed salary of \$3,100.33.

The claimant seeks liquidated damages on these wages as the employer failed to pay his final wages within the requirements of RSA 275:44 I.

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 claimant acknowledged he did not believe that his payment was outside of the requirements of RSA 275:44 I out of "any animosity" on the part of the employer, but probably someone in Human Resources clicked the wrong button in their payroll software.

Because the claimant believes the employer probably made an error when executing his separation in the payroll system, the late payment of wages fails to rise to the standard of "willfully and without good cause" set in Ives v. Manchester Subaru, Inc. 126 NH 796.

As such, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence liquidated damages are due.

The claimant requested statutory interest on this claim. Pursuant to RSA 524:1-b statutory interest is calculated from the date of writ, or the filing of the petition, in this case February 21, 2019, to the date of judgment, or April 23, 2019, on the judgment of \$3,100.33. The claimant is awarded \$22.28 in statutory interest, based on the 2019 interest rate of 4.3%, as determined by the State Treasurer.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant proved by a preponderance of the evidence that he was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$3,100.33.

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 this portion of the Wage Claim is invalid.

As RSA 524:1-b allows statutory interest to be assessed from the date of writ, or the filing of the petition, in this case February 21, 2019, to the date of judgment, or April 23, 2019, the claimant is awarded \$22.28 in statutory interest.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$3,122.61 (\$3,100.33 + \$22.28), less any applicable taxes, within 30 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: April 23, 2019

Original: Claimant
cc: Employer