

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**International Cars LTD dba Porsche of Stratham**  
**Case No.: 58595**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/commissions/bonus  
RSA 275:43-b unpaid salary

**Date of Hearing:** May 1, 2019

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$1,560.13 in minimum wage requirements for 215.19 hours; \$350 for year-end bonus at \$50 for seven cars; and commissions for three cars which he sold, but have not yet been delivered to customers.

The employer denies he is due any minimum wage rate as he was a salaried employee with an additional draw against commissions, commissions and bonuses. He earned, at a minimum \$11 an hour for all hours worked.

At the hearing, the employer agreed the claimant was due a sum of \$85.72, representing two days of pay, Labor Day 2018 and a sick day. They agreed to forward a check to the Department that day.

The hearing was left open until 4:30pm on Monday, May 6, 2019, for the employer to remit a check in the amount of \$85.72. The check was received by this Department timely and enclosed with this Decision.

**FINDINGS OF FACT**

The claimant worked for the employer from May 5, 2018, through January 3, 2019, when his employment was terminated.

Pursuant to the written pay plan, signed by the claimant May 7, 2018, and updated August 6, 2018, the claimant was a salaried employee earning a \$600 biweekly salary; a \$600 biweekly draw against commission; monthly commissions reconciled against the draw; a CSI monthly commission; and a year-end commission of \$50 per unit sold during the calendar year. Employer's Exhibit March 21, 2019.

The claimant sold three cars prior to his separation from employment. The claimant agrees those three cars have not yet been delivered to the customers. The employer offered to provide the claimant a split commission on the sales once completed as another sales person will need to deliver the car to complete the sale.

## **DISCUSSION AND CONCLUSIONS**

The claimant argues he is due \$7.25 in unpaid minimum wage for 215.19 hours worked over the course of his employment. He alleges that the salary he received was for a workweek of forty hours, though he was scheduled for greater than forty hours each week. He seeks compensation for all the hours worked over forty each week, at a rate of \$7.25 per hour.

The employer argues the claimant was paid a salary and draw against commission to compensate for all hours worked. There was no agreement for a workweek of only forty hours per week within the written pay plan nor was there any verbal agreement. The written pay plan articulates that a minimum wage adjustment will be made should the claimant not receive minimum wage for all hours worked in any given pay period. Further, the claimant received at least \$11 per hour for all hours according the time sheets and payroll records. He is not due any minimum wage adjustment, Employer's Exhibit April 25, 2019.

RSA 275:43-b I specifically states that a salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked. There is no statutory cap on the number of hours worked at forty hours per week.

The employer persuasively argues the claimant was a salaried employee, pursuant to the written pay plan, and that he received a minimum of \$11 per hour, greater than the \$7.25 statutory minimum per hour, for all hours worked, Employer's Exhibit April 25, 2019.

Because the claimant was a salaried employee and received more than the statutory minimum wage for all hours worked, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed minimum wage.

The claimant argues he completed sales for three cars, which he agrees have not yet been delivered. He argues he is due the earned commission.

RSA 275:49 I requires that an employer inform employees of the rate of pay at the time of hire. 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 written pay plan states, in relevant part, "MONTHLY COMMISSION: a) Sales consultants will be paid the following commission schedule based upon sales and delivery of New and Used vehicles. [b), c) an d) discuss calculations] e) This commission is paid monthly, normally on the first pay period after the 10<sup>th</sup> of the month." Employer's Exhibit March 21, 2019.

As the three cars have not been delivered, as acknowledged by the claimant, no commission is yet payable pursuant to the written pay plan.

Because the cars have not yet been delivered, the commissions have not yet been earned, therefore, no Decision can be rendered for this portion of the claim.

The claimant argues he is due \$350 in year-end bonus for seven cars sold for which he did not receive a \$50 bonus. He claims to have sold forty-nine cars and only received payment for forty-two.

The claimant's argument he is due an additional \$350 in unpaid year-end bonus is not persuasive as he did not provide testimony and evidence to support his claim of having sold seven cars for which he did not receive any bonus payment.


### **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 this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed minimum wage calculation, it is hereby ruled that this portion of the Wage Claim is invalid.

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 bonus/wages, it is hereby ruled that this portion of the Wage Claim is invalid.

Enclosed is the check for \$85.72 which the employer agreed is due to the claimant.

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Hearing Officer

Date of Decision: May 3, 2019

Original: Claimant  
cc: Employer