

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

ATOMIC VAULTS, INC.

Case No. 23-WG-00404

**DECISION OF THE HEARING OFFICER**

**Appearances:** [REDACTED] (Employee)  
Ming Zhao - CEO (Employer)

**Nature of Dispute:** RSA 275:43, I - Unpaid Bonus

**Date of Hearing:** March 28, 2023

**BACKGROUND AND STATEMENT OF THE ISSUES**

The employee filed a Wage Claim with the Department on February 1, 2023. On February 10, 2023 the employer objected. On February 22, 2023 the employee requested hearing. On March 28, 2023 this hearing was scheduled on the issues presented by RSA 275:43, I - Unpaid Bonus. The employer appeared by telephone and the employee appeared at the Department of Labor.

**PRE-HEARING ORDER**

As the Hearing commenced the employee stated that he was prepared to go forward on RSA 275:43, I - Unpaid Bonus *and* Liquidated Damages. The claimant misunderstood the Department Forms for filing his claim. The Department ruled that since the claim was not properly pled or noticed for the Hearing it would not be considered. The employee is granted leave to file a claim for Liquidated Damages pursuant to RSA 275:44 IV within 10 days of the date of this decision. If the claim is filed the employer has 10 days from the filing date in which to object.

**FINDINGS OF FACT**

The following findings of fact are based upon the testimony of the witnesses, their submissions and matters of record in the Department file.

The parties entered into a written agreement on or about May 6, 2022 stating in pertinent part:

You will be paid as compensation for your services at a gross rate of \$60,000 per year, payable on the Company's regular payroll dates. Upon signing this offer letter, you will be paid a signing bonus of \$40,000 within twenty days after the Effective Date. You and the Company acknowledge and agree that the signing bonus will not be earned in whole unless and until you are continuously, actively employed by the Company through the first anniversary of the Effective Date. If your employment is terminated by the Company with cause at any time prior to the first anniversary of the Effective Date, or by you for any reason prior to the first anniversary of the Effective Date, you will be obligated to immediately repay to the Company an amount equal to the unearned portion of the signing bonus. (emphasis added)

The employee's first day of work was June 6, 2022 and his last date of employment January 27, 2023 when he was terminated for cause. He was actively employed for 34 weeks of the full year noted above.

The employee was not paid his \$40,000.00 signing bonus within the twenty days agreed upon. Indeed, this was not addressed until after he was terminated almost 8 months later.

The employer testified that the delay was imposed by the employee insisting that he enter his own tax deductions and withholdings from the signing bonus. However, he never followed up on that with anyone for submission to the payroll department.

The employee testified when he asked to enter the withholding information himself the employer said he is not allowed to do that and that the employer would enter the deductions for prompt payment of the signing bonus that they never followed up on.

After the employee was terminated for cause on January 27, 2023 the employer sent the employee an offer with severance and payment of \$30,000.00 representing more than the prorated share of his signing bonus. The offer was time sensitive. If not agreed to within 4 days, the signing bonus paid would be \$26,153.85 representing the 34 weeks of the year that the employee actually worked. The employee did not respond. He was then paid the prorated amount of \$26,153.85.

### **DISCUSSION AND CONCLUSIONS**

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

A bonus award, when due, is considered part of wages, pursuant to RSA 275:42, III. 'When due' is a reference to contingencies specified in the description of the employers' bonus plan that the employee needs to meet in order to be eligible for the bonus. It is the employee's

burden to prove that the employer offered him such a plan and that he met the contingencies entitling him to receive the bonus.

The employee seeks an order requiring the employer to pay \$40,000.00 because he never received the promised bonus within 20 days as required by the parties' employment contract. He argued multiple infirmities with the employer's conduct. The 20-day deadline for payment was proposed by the employer. Compliance was their obligation.

The employee argued that the \$26,153.85 payment was really severance not his prorated bonus. It was addressed until and along with his Separation / Severance Agreement drafted by the employer. The employer was required to send him \$40,000.00 and then pursuant to the agreement he would send them a check representing the prorated delta.

The employer argued that the employee was paid all wages and bonus owed upon separation. After a careful review of the evidence and testimony this argument is persuasive.


The Department finds that the payment of \$26,153.85 clearly represented the prorated bonus, not severance. The employee has not sustained his burden to prove by a preponderance of the evidence that he is owed any portion of his signing bonus whatsoever. The employee was paid exactly what the parties' contract required.

### DECISION

Based on the testimony and evidence presented, this Department finds the claimant has not met his burden to prove by a preponderance of evidence that he is owed additional wages. The claim is respectfully, **DENIED**.

Such is the order of the Department:

April 25, 2023  
Date of Decision

  
\_\_\_\_\_  
David I. Barlinson, Esq., Hearing Officer

DIB/nd