

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

CocoMart Inc dba Subway and Jiffy Mart

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay

Employer: CocoMart Inc dba Subway and Jiffy Mart, PO Box 229
Perkinsville, VT 05151

Date of Hearing: August 11, 2014

Case No.: 48159

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$858.66 in unpaid vacation pay, which he argues was due upon his termination. He argues that although he saw and signed for the written policy which states all benefits are forfeited upon termination, he was told by his mother that vacation is earned and is his.

The employer denies the claimant is due any vacation pay. The written policy of the employer states, in relevant part, "Terminated employees forfeit all benefits."

The claimant signed an acknowledgement for the written policies of the employer on August 18, 2011. Both the policy and acknowledgement were previously submitted.

FINDINGS OF FACT

The claimant worked for the employer from August 2011 through May 2014, when he was terminated by the employer.

RSA 275:49 V requires the employer to make available to employees, in writing or through a posted notice, employment practices and policies with regard to vacation pay. Lab 803.03 (c) requires the employer to inform employees in writing of any change in vacation pay practices or policies prior to the effective date of the change and (f)(6) requires an employer to maintain on file a signed notification of the acknowledgement of the proper notifications.

The employer properly notified the claimant of the written policy and maintained on file the claimant's signed and dated acknowledgement.

The written policy of the employer states, in relevant part, "Terminated employees forfeit all benefits."

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimant vacation pay under the written policy of the employer.

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 RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any vacation pay, it is hereby ruled the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 20, 2014

Original: [REDACTED]
cc: CocoMart Inc., dba Subway and Jiffy Mart

MJD/klt