

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

BAY STATE DISPOSAL INC.

DECISION OF THE HEARING OFFICER

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

Employer: Bay State Disposal Inc., 15 Industrial Way, Atkinson, NH 03811

Date of Hearing: May 26, 2016

Case No.: 52627

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 4, 2016. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on April 28, 2016.

The claimant testified that he worked for the company for six months. To the best of the claimant's knowledge there was no employee handbook in place. When he was hired the claimant testified that he was told that he had one week of vacation time coming in the first year. The claimant testified that he is owed a total of 56 hours in leave time. The claimant was paid at a rate of \$21.63 per hour.

The employer testified that the claimant was aware of the personnel policies because he signed for them. The practice of the employer was to not pay out unused leave time. The employer testified that they had a "use it or lose it" policy. The employer said that they could not find any circumstances where they paid out unused leave upon separation.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

This is the part of the law where an employer is mandated to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This section of the law places an issue such as earned time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden. In this matter the claimant would have had to have shown that, by policy, practice or both, this employer paid leave time out at time of separation from employment.

The employer was credible in their position that any unused leave time was lost upon separation of employment. The employer was also credible in their testimony that there is no history of unused leave time being paid out upon separation.

The claimant feels that his leave time is an entitlement and should be paid, but did not offering anything to demonstrate that it was a policy/practice of the employer to make such payment at time of separation.

The employer believes that all wages have been paid.

It is found by the Hearing Officer that the Wage Claim is invalid. The leave time in this claim is not considered wages and therefore is not due to be paid.

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 that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 15, 2016

Original: Claimant
cc: Employer
TFH/aph