

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

JORGENSEN TOOL AND STAMPING INC.

DECISION OF THE HEARING OFFICER

Appearances: Anne M. Rice Esq., Attorney for the Claimant
Linda S. Johnson Esq., Attorney for the Employer

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation time
RSA 275:44 IV liquidated damages
Attorney Fees

Employer: Jorgensen Tool and Stamping Inc., 23 Fruite Street, Belmont, NH 03220

Date of Hearing: January 28, 2014

Case No. 40458

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 15, 2010. 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 October 14, 2013. The Wage Claim was held open until February 7, 2014 for written closings.

The hearing was held on January 28, 2014. The claimant stated that he was seeking \$24,075.00 plus liquidated damages from the employer. The testimony shows that the claimant worked for the employer from 1989 until 2010. He started out as an hourly employee and became a salaried employee in the year 2000. The claimant stated that when he went from an hourly employee to a salaried employee he was paid his leave. The claimant also testified that he did not remember any salaried employees leaving the company during his tenure.

There was one witness who testified that it was understood that the time would be paid out. This witness was a 49% owner of the company who left to form his own company. The witness said that he was a salaried employee who when he left did not receive a payout because he was an owner. In his new company he has the policy to pay out the leave for hourly and for salaried employees. The witness said that the employees could carry over leave time

and, upon request, be paid for the time. He did admit that he never saw a salaried employee get paid for accrued leave.

The employer provided testimony that said all salaried employees were paid a yearly salary and this never changed. Because it was a small company people took leave as needed and continued to receive full pay. The witness stated that when the claimant asked for his accrued leave they started to pay some until it was researched. The Vice-President thought the claimant said that he never took any leave. The records show that the claimant did take time off and was paid his regular salary. When he asked for some extra money, the employer gave it to him.

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.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer 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 part of the law places an issue such as vacation time into the category of wages when the time is due and owing.

RSA 275:44 IV reads: "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10% of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition."

The claimant can ask for liquidated damages up to the amount of the Wage Claim. This request requires the Hearing Officer to find that the employer was willful and/or did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, 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.

The claimant did not show that there was any buy out of accrued vacation time for any employee working in a salaried position. The part owner said that his new company has this provision but he never remembers it happening while he worked with the employer in this Wage Claim. The part owner, also a salaried employee, did not receive a pay out when he left the company.

The employer was credible in testifying that all salaried employees were paid in full when they took leave. This was a consistent practice within the company until the claimant requested his time. The employer said that salaried employees were aware of this practice and because the claimant was a valued member of the staff, he was given leave time upon request. The claimant could also ask for a payout, at times, of part of his leave and this was done.

The Wage Claim is invalid and there is no finding for liquidated damages. There is also no provision in the Wage Claim process that allows for Attorney's Fees so this request is invalid.

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.

All other requests are invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 4, 2014

Original: Claimant
cc: Employer

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