

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

TAGGART ICE INC.

DECISION OF THE HEARING OFFICER

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

Employer: Taggart Ice Inc., 8 Taggart Dr., Nashua, NH 03060

Date of Hearing: December 16, 2013

Case No. 46859

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 16, 2013. 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 November 15, 2013.

The claimant testified that he worked for the employer for four years. He was an hourly employee and there was an employee handbook in place. The claimant said that he had signed contracts over the years that stated his hourly rate. The claimant also said that he was guaranteed 40 hours per week. This was not lived up to by the employer and some weeks he did not get forty hours of work. The claimant feels that he is due the balance of wages for the pay periods when he did not get a full forty hours of work.

The also contends that he is due a pay out for unused accrued time. The handbook stated that the time had to be used or it was lost. However, it did not address a payout upon separation from employment. The Wage Claim is for \$2,383.75 in unpaid hourly wages and unused accrued leave time.

The employer testified that there was never any guarantee of forty hours of work per week. The employer did give the claimant raises and he was paid for all hours worked.

The employer said that there was a handbook in place and it addressed the accrual of time and the amounts for annual and sick time. This handbook was known to the claimant. The employer stated that there was no past practice of paying out unused leave upon separation.

The handbook did not address this issue except to say that the time was lost if not used. The claimant did use some time before his separated his employment. The balance is not paid out.

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 accrued 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 presented at 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 testified that he was an hourly employee and he is seeking wages for hours not worked but promised. This request is against the regulations governing an hourly employee. If the wage package was for "all time" in a pay period, it would be classified as a salaried position. The employer paid for all hours worked as is required.

The claimant is also seeking unpaid but accrued leave time. The written policy states that unused time is lost. The claimant is seeking unused time because he did not work the full year. This is adding to the intent of the policy and is not valid in the Wage Claim.

The employer was credible in their testimony that there was never any promise to pay for hours not worked. The employer said that they paid for all hours worked which is required for an hourly employee.

The employer was also credible in stating that there was never any payout of accrued time upon separation. The written policy said that is it was unused it was lost. The claimant requested a payout that was outside of the written policy.

The Wage Claim is invalid.

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 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 or sick pay, it is hereby ruled that the Wage Claim is invalid.

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 the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 7, 2014

Original: Claimant
cc: Employer

TFH/all