

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

AVAYA GOVERNMENT SOLUTIONS

DECISION OF THE HEARING OFFICER

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

Employer: Avaya Government Solutions, 211 Mt. Airy Road, Basking Ridge, NJ 07920

Date of Hearing: March 3, 2014

Case No. 47111

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on or about December 11, 2013. The notice was sent to the employer and there was an objection. The Prime Contractor was also notified. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to all parties.

The claimant provided testimony that he worked under a Federal Grant Contractor. Avaya Government Solutions was a sub-contractor. The work was limited to a set amount of time. This time period was set by a competitive bidding process. Avaya Government Solutions was replaced by another company. All the employees received lay-off notices. The letter of termination stated that the employees were entitled to all unused sick leave.

The claimant stated that the company sent a letter that explained the summary of benefits and the COBRA law. The claimant said that the summary conflicted with the letter about the paying out of accrued sick leave time. The employees never received a payout of the sick time or a corrective letter of explanation. The employees felt that the letter set a new policy on sick time being paid out.

The employer testified that this claim should be heard under the Collective Bargaining Agreement (CBA). The parties worked under the negotiated terms of the CBA and did not change the terms to reflect the pay out of accrued sick time. The employer and the Union were aware of the situation. There were many discussions and the Union did not file a grievance over the issues involved in the Wage Claim process.

The employer admits that the letter that stated there would be a pay out of accrued sick time was an unfortunate situation. It was a mistake as written and conflicted with the negotiated

CBA. There was a buy out provision at the end of the year but it did not deal with a lay-off situation. There were provisions in the CBA that allowed the parties to meet and agree to changes in the CBA. That did not happen in this case. The employer stated that they could not change the CBA on their own.

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 sick time under 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 for the hearing, that the Wage Claim is invalid. The claimant's had the burden to show that there were wages due and owing and they did not meet this burden.

The employer is correct that the grievance procedure under the Collective Bargaining Agreement would have been the proper forum for this claim. The parties did not agree to the payout and that is required of an employer and a Certified Bargaining Agent.

Even after the issue was known to the Union, there was no grievance filed. A letter issued by mistake does not supersede the obligations under the Collective Bargaining Agreement.

The Wage Claim 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 this Department finds the claimants failed to

prove by a preponderance of the evidence that they were not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 24, 2014

Original: Claimant
cc: Employer

Harris Information Technical Services (Prime Contractor)
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TFH/all