

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

GODBOUT ENTERPRISES LLC
dba
MR. ROOTER PLUMBING AND HEATING

DECISION OF THE HEARING OFFICER

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

Employer: Godbout Inc, dba Mr. Rooter P&H, 7 Tallwood Drive, Bow, NH 03304

Date of Hearing: April 15, 2014

Case No. 47586

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on February 19, 2014. 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 March 14, 2014. The Wage Claim is for \$3,259.00 in unpaid vacation time.

The claimant testified that he worked for six years and eight months for the employer. At the time he left the service of the employer he was entitled to three weeks of vacation time for an anniversary year. His anniversary date was March 19.

The claimant resigned on November 15, 2013, effective November 29, 2013. He was paid his earned wages and he was paid for seven days of vacation time on the books. Based on working eight months, the claimant feels that he is due two of the three weeks he earned.

The employer testified that there was a handbook in place and it was known to the claimant. The employer also recorded time off and stated that the claimant had seven days remaining from the anniversary year. The claimant would not have received another three weeks until March 19, 2014.

The employer said that they paid all wages due because the seven days of vacation time was all that was due and owing.

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.

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 worked under the written policy for over six years. The policy has not changed and the employer's record keeping seem to be accurate and unchallenged during his employment years. The claimant resigned voluntarily and was paid all wages due.

The employer was credible in their testimony that vacation time was earned on an employee's anniversary date, in this case March 19. The employer also provided credible evidence that the claimant did use vacation time during the work year and that they paid him the remaining seven days upon separation.

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

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: May 5, 2014

Original: Claimant
cc: Employer

TFH/clc