

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

**V**

**Systems Documentation Inc.**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay  
RSA 275:44 IV liquidated damages

**Employer:** Systems Documentation, Inc., 1551 S. Washinton Ave,  
Piscataway, NH 08854

**Date of Hearing:** May 29, 2014

**Case No.:** 47808

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of her wage claim, that she was owed \$710.00 in unpaid wages for three days of vacation pay that were not paid up her separation from employment. She further sought liquidated damages.

The claimant notified the Department that she received the wages for the vacation time but still wished to proceed with the liquidated damages portion of the claim.

The employer argues they notified the claimant, through an exit interview on March 4, 2014, that her three days of vacation pay would be paid out on or around April 18, 2014. They paid the claimant a month's worth of severance pay and then paid the vacation pay in the following paycheck, as they stated they would do.

They further argue there was nothing willful about holding the vacation pay. They notified the claimant of the date it would be paid and they followed through with payment.

**FINDINGS OF FACT**

The claimant was laid off from the employer on February 28, 2014, after thirteen years of employment. The claimant participated in an exit interview in which the employer informed her that she would receive a month of severance and she would receive her remaining three days of vacation pay on April 18, 2014.

The employer paid the claimant the severance pay as outlined in the exit interview and it was reduced to writing. The employer also produced a check for the claimant on April 18, 2014, which she received via US Mail on April 22, 2014.

The claimant argued the employer willfully and without good cause withheld the vacation pay until April 18, 2014. She argued the vacation pay should have been included with her final paycheck for wages, not held until after the severance pay has been paid out to her. She further argued RSA 275:44 requires vacation pay, as part of all wages due, to be paid within a specific timeframe and the employer failed to do so.

The employer argued they notified the claimant of the payment schedule and followed the schedule. They were not willful in holding the vacation pay, as they paid her severance pay, which is not a company benefit, but they argued for her as she had been a good employee.

RSA 275:43 V holds that 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*.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

Pursuant to RSA 275:43 V, vacation pay becomes wages only when due. The employer expressly notified the claimant of that the vacation pay was to be paid on April 18, 2014. The employer did pay the wages on the schedule they had notified the claimant that the wages would be paid. The Hearing Officer finds the employer did not act willfully in paying the wages on April 18, 2014.

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay her all wages due in the time required because the wages were not due with her final pay check of wages for hours worked, but on April 18, 2014, when the wages were paid.

### **DECISION**

Based on the testimony and evidence presented, as RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the timeframe required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the timeframe required by statute, it is hereby ruled that the wage claim is invalid.

/s/

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Melissa J. Delorey  
Hearing Officer

Date of Decision: June 4, 2014

Original: Claimant  
cc: Employer

MJD/clc