

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

CLIPPER HARBOR

DECISION OF THE HEARING OFFICER

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

Employer: Clipper Harbor, 188 Jones Avenue, Portsmouth, NH 03801

Date of Hearing: July 14, 2014 (open until July 22, 2014)

Case No. 47956

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 14, 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 June 19, 2014.

The claimant testified that he was due \$8,476.55 in unpaid wages and leave time. He stated that he was an hourly employee and that there was a handbook in place and he was aware of the handbook.

The claimant was called into the office to review some problems that the employer felt were not leading to a good working environment. The claimant agreed to resign from his position for four weeks of pay and not to have his unemployment request challenged. The employer agreed to this and the claimant resigned from his position. The claimant later stated that it was a forced resignation.

Upon his resignation the claimant was not paid for any accrued vacation time and sick time. He also feels that he earned one holiday and was not paid for it upon termination.

The claimant did say that he was told to work off the clock because there was a shortage of help and there was no overtime allowed. He did say that at times, he would be given compensatory time. He feels the employer was aware of his extra, undocumented time and never mentioned it.

The employer testified that in March of 2013 they became aware of employees working off the clock. They did an investigation of this practice and they found it was actually happening. The claimant was given a written warning for doing this and was told that any further occurrence would lead to him being discharged. The claimant was also paid for this extra time with a check for about \$15,000.00. The employer said that they were shocked to hear that it was happening and the claimant was not filling out the time on his time sheets. At any time the claimant was questioned about his time he was always saying that all time had been paid.

The employer also said that there is no payout of accrued leave with a voluntary resignation. Therefore no time is due and owing for the accrued leave. However, the employer did say that the "floating" holiday should have been paid. A review of the records shows that the claimant is due that day in the amount of \$250.48.

The employer also reviewed the claimant's records and found that he is due wages for some unpaid lunches that he worked. The claimant is due \$250.02 for these lunches.

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 earned 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 valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and he did show there were some wages due. His Wage Claim prompted a review by the employer and it showed the underpayment of wages.

The testimony shows that the employer made it very clear on their position of working off the clock. The claimant was disciplined in the past and paid a sizable amount to correct the past practice. The claimant should have been very aware of the employer's position of this issue.

The written handbook that was in place governed the use and the payout of accrued leave. This was also clear to the claimant and expressed the intent of the employer.

The review of records show that the claimant is due \$500.50 for unpaid working lunches and also for the earned holiday prior to resignation.

The Wage Claim is valid in the amount of \$500.50.

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 this Hearing Officer finds that the claimant proved that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$500.50.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$500.50, less any applicable taxes, within 20 days of the date of this Order.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 5, 2014

Original: Claimant
cc: Employer

TFH/cag