

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

V

Preferred Warranties Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:43 V unpaid personal day pay

Employer: Preferred Warranties Inc., 13065 Hamilton Crossing Boulevard,
Carmel, IN 46032

Date of Hearing: July 24, 2014

Case No.: 47966

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$3,174.16 in unpaid wages for eighty-eight hours of unpaid vacation pay and \$1,442.80 in unpaid wages for forty hours of unpaid personal day pay which was due upon his separation from the employer.

He feels he was wrongfully terminated after being a top producer. He was ridiculed at work and does not like how his termination was handled. He feels the employer should have to pay the wages claimed because he was "out of a paycheck" when he was terminated abruptly.

He also argues though he signed an acknowledgement for, and received a copy of, the written policy for KAR Auction Service, Preferred Warranties Inc was not listed in the handbook as covered entity.

The employer denies the claimant is due any further wages. The written policy regarding personal day pay states, "Personal days may not be carried over and are not paid out upon separation." Therefore, he is not due any payment for the personal day pay claimed.

The vacation policy states, "Pay out is based upon monthly designate balance minus any time taken during the year." The chart references a separation in the month of April, for his tenure, would yield a payout of thirty-two hours. The claimant used twenty-four hours of vacation pay and he was paid eight hours of vacation pay with his final wages.

The claimant signed an acknowledgement of these policies on July 1, 2013.

FINDINGS OF FACT

The claimant was terminated by the employer in April 2014. He was paid for eight hours of vacation pay and did not receive any personal day pay.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the written policy and maintained his signed acknowledgement on file. The written policy regarding vacation pay states, "Pay out is based upon monthly designate balance minus any time taken during the year." The chart references a separation in the month of April, for his tenure, would yield a payout of thirty-two hours.

The claimant used twenty-four hours of vacation pay this year and he was paid eight hours of vacation pay with his final wages.

The claimant's argument that the KAR Auction Services policy does not apply because Preferred Warranties Inc. is not specifically listed, is not persuasive. The employer provided the policy to the claimant and the claimant understood this to be the policy under which he was working.

The claimant's argument that he had eighty-eight hours of vacation pay listed on his paystub is also not persuasive. The pay stub also states, "PTO balance may reflect an unearned advance on an employee's quarterly grant. See PTO policy for specific details and earned accruals."

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the claimed vacation pay.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding personal day pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the written policy and maintained his signed acknowledgement on file. The written policy regarding personal day pay states, "Personal days may not be carried over and are not paid out upon separation."

In a separate section of the handbook the additional statement of “unless dictated by state law” is included.

Nothing in RSA 275:49 requires an employer to pay an employee for unused personal days pay upon separation, only that the employer provide a written policy to the employees stating how the days are earned and how they are treated upon separation. The employer complied with these requirements.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed personal day pay under the written policy of the employer.

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 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 this portion of the Wage Claim is invalid.

As RSA 275:43 V considers personal day 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 personal day pay, it is hereby ruled that this portion of the Wage Claim is invalid.

/s/

Melissa J. Delorey
Hearing Officer

Date of Decision: August 6, 2014

Original: 
cc: Preferred Warranties Inc.

MJD/cag