

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

JRB Transportation Inc

DECISION OF THE HEARING OFFICER

Appearances: Peter Decato, Esq., representing the claimant

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:43 V unpaid vacation pay

Employer: JRB Transportation Inc., PO Box 5095, W Lebanon, NH 03784

Date of Hearing: July 23, 2014

Case No.: 48130

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$420.00 in unpaid salary for work performed during the week ending May 4, 2014. She also seeks \$1,960.00 in unpaid vacation pay, for vacation pay from 2013 and 2014.

She argues she was a salaried employee paid \$700.00 per week. For the week ending May 4, 2014, the employer only paid her \$280, though she worked the full week. On April 29, 2014, she made a statement "I cannot work under these circumstances" but she stated that it did not mean that she quit. She testified that she continued to work on April 30, May 1 and May 2, 2014.

She further argues that she had vacation pay from 2013 and had accrued vacation pay for 2014, for which she was not paid with her final check. Mr. Ogle purchased the business on July 17, 2013, in a stock purchase. She was told everything would remain the same. She was not given any new written policies regarding vacation pay.

The employer denies the claimant is due any further salary. He argues that on April 29, 2014, the claimant walked down the stairs and stated, "I cannot work under these circumstances", which he took to mean that she quit. He testified that he did not see her perform any work for the rest of the week, though she was at the office. Her mother also worked at the office. He paid the claimant for the number of days she worked, not her full salary, because she quit.

He further argues he was not aware of the 2010 employee handbook, previously submitted by the claimant. He found a 2003 handbook, previously submitted. He asserts the claimant and witness, her mother, may have withheld the 2010 handbook from him upon his purchase of the business on July 17, 2013.

He testified that the 2003 vacation policy states, "PAID VACATIONS (For full time employees) Employees who complete their trial period will be entitled to the following amount of vacation: After one full year of employment you have earned (five days) vacation that can be taken during the next 12 months. At five years of continuous employment, you will be eligible for ten days of vacation." "Vacations cannot be carried over from vacation period to vacation period." The 2010 handbook states, "PAID VACATIONS (For full time employees) Employees who complete their trial period will be entitled to the following amount of vacation pay: After one full year of employment you have earned (five days) vacation that Can be taken during the next 12 months. At five years of continuous employment, you will be eligible for ten days of vacation."

He testified the claimant was on part time status from July 2013 until January 2014, and therefore would not qualify for vacation pay under the 2010 vacation policy, which he had not seen prior to this claim.

FINDINGS OF FACT

The claimant worked for the employer for approximately fifteen years, ending during the pay period May 4, 2014.

The parties disagree as to the circumstances surrounding the claimant's separation of employment. The claimant argues she worked through May 2, 2014. The employer argues she quit April 29, 2014, and did not perform any work after that date.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she was an employee after April 29, 2014. The Hearing Officer finds that the claimant failed to meet that burden of proof as her story is only as credible as, not more credible than, the employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that she is owed the claimed wages/salary.

The claimant alleges she is due two week of vacation pay from 2013 and four days accrued in 2014.

The employer purchased the business in a 100% stock purchase on July 17, 2013.

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.

The employer provided credible testimony that he was not aware of any vacation policy, but did find a copy of a 2003 employee handbook which outlined vacation as

follows, for "PAID VACATIONS (For full time employees) Employees who complete their trial period will be entitled to the following amount of vacation: After one full year of employment you have earned (five days) vacation that can be taken during the next 12 months. At five years of continuous employment, you will be eligible for ten days of vacation." "Vacations cannot be carried over from vacation period to vacation period."

The claimant previously submitted a 2010 vacation policy that reads, "PAID VACATIONS (For full time employees) Employees who complete their trial period will be entitled to the following amount of vacation pay: After one full year of employment you have earned (five days) vacation that Can be taken during the next 12 months. At five years of continuous employment, you will be eligible for ten days of vacation."

The claimant worked on a part time status paid hourly between July 2013 and January 2014, when she was placed salary, documentation previously submitted.

The claimant did not provide any substantive evidence to show that she had any vacation time accrued for use. The paystub submitted did not show any vacation time available or accrued.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she had vacation time available, and that it was due to her 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 this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages/salary, it is hereby ruled that this portion of the Wage Claim is invalid.

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 she is due any vacation 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: [REDACTED]

cc: JRB Transportation Inc.
Peter Decato, Esq., Decato Law Office

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