STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████
V

GRENIER AUTO BODY

DECISION OF THE HEARING OFFICER

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

Employer: Grenier Auto Body, 8050 South Willow St., Manchester, NH 03103

Date of Hearing: August 6, 2014

Case No. 48171

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on May 30, 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 July 3, 2014.

The claimant testified that he worked for the employer for about three and a half years. He said that there was an employee handbook in place. He believes that when he was terminated from his position he should have been paid all of his accrued vacation because it was earned in the previous year.

The employer testified that there was a handbook in place and it was known to the claimant. The handbook is clear that there is no payout of accrued vacation time upon separation, The claimant was discharged for cause. There is no accrued time paid out.

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 admitted that there was a handbook in place and the language of leave time addressed the issue of the payout of the time.

The employer testified that the claimant was discharged for cause. The employee handbook made it clear that there was no pay out of the time. There is also no language that addresses the fact that the time was earned in the preceding year.

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.

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 the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman
Hearing Officer

Date of Decision: August 21, 2014

Original: ███████
cc: Grenier Auto Body

TFH/klt