

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



V

**R.D.EDMUNDS AND SONS INC.**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** R.D.Edmunds And Sons Inc., 221 Franklin St., Franklin, NH 03235

**Date of Hearing:** August 12, 2014

**Case No. 48272**

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on June 10, 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 10, 2014.

The claimant testified that he worked for the employer for seven years. He was an hourly employee and the accrual of vacation time was based on the number of years employed. He at first claimed that he was due 40 hours of vacation time and the claim was amended to 80 hours because of his longevity with the company. There is a company handbook in place for all employees.

The claimant stated that he was owed three weeks of vacation time because he was in his seventh year. He said that he did take some time off in 2014 and that is why he first asked for one week to be paid. He now wants two weeks because of his longevity.

The claimant said that he had a meeting with the owner and asked for a raise in wages and he gave his notice that he was all through on May 30, 2014.

The employer testified that the claimant started to work for the company on August 7, 2007. At the time of his separation from employment he had not met or passed the seven year threshold to receive three weeks of vacation time. The employer said the claimant went over his time in 2013 and agreed to take the time off from his 2014 allotment.

### **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 in part and valid in part. The claimant has the burden to show that there are wages due and owing and he partially met this burden.

The claimant failed to show that he had worked seven years so that he would be entitled to three weeks of vacation time. The employer was credible in their testimony that the claimant resigned his position at the end of May in 2014 and that his seventh year would have started on August 7, 2014. He had not earned that extra week at that point.

The claimant prevails in his request for one week of vacation time. The employer said that the claimant took extra time in 2013 and he was to have it deducted in 2014. This was not in writing anywhere and the employer did not present records to show the time was deducted in 2014.

The claimant was credible in testifying that he used time in 2014 and is seeking the balance to be paid as is specified in the employee handbook.

The Wage Claim is valid for 40 hours of vacation time in the amount of \$720.00.

**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 proved by a preponderance of the evidence that he was not paid all vacation pay due, it is hereby ruled that the Wage Claim is valid in the amount of \$720.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$720.00, less any applicable taxes, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: August 29, 2014

Original: [REDACTED]  
cc: R.D.Edmunds And Sons Inc.

TFH/klt