

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


V

Red Hill Insurance LLC dba HPM Insurance

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
RSA 275:44 IV liquidated damages

Employer: Red Hill Insurance LLC dba HPM Insurance
633 Elm St.
Milford, NH 03055

Date of Hearing: August 25, 2014

Case No.: 48275

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$615.93 for forty hours of unpaid vacation pay and personal day pay due upon his separation from employment. He further sought liquidated damages.

The employer submitted a check for \$169.69, net, for liquidated damages and a check for \$151.87, net for the payment of eight hours of vacation pay and personal day pay.

The claimant chose to continue for the balance of the claim.

The claimant amended his claim to 1.79 hours of personal day pay which he claims was grandfathered and an equal amount of liquidated damages. He also sought \$173.04 in liquidated damages from the original claim. He agreed the vacation pay had been paid in full.

The employer agreed they had not paid all vacation pay and personal day pay upon separation. They had the monthly vacation day and personal day accrual sheets for January, February, March and April 2014. They were unable to access May 2014 as the claimant had password protected the file and they were unable to find the password. They were unable to locate the May 2014 accrual sheet in email or elsewhere. Upon notification from this Department, they drew a check to the claimant for eight hours of vacation and personal day pay, in the net amount of \$151.87, and \$169.69 for liquidated damages.

They argue that the discrepancy is in a difference of opinion as to the personal day policy in effect when the claimant was terminated. They are using the accruals from the April 1, 2014, policy for all of 2014's accruals, which the claimant helped to craft. They state no further wages are due.

FINDINGS OF FACT

The claimant worked for the employer from November 2013 through May 16, 2014, when he was terminated. His hourly rate was \$21.63.

The employer had instituted a new personal day accrual policy on April 1, 2014. They applied the new accrual to January, February and March 2014.

The vacation policy accrual remained the same, at 6.67 hours per month. The personal day accrual changed from four hours accrued per month to 3.33 hours on April 1, 2014.

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.

and:

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 (c) states, pursuant to RSA 275:49, every employer shall inform his/her employees in writing of any change to such employees rate of pay, salary or employment practices or policies as referred to in Lab 803.03 (a) and (b) prior to the effective date of such change;

Lab 803.03 (d) states, pursuant to RSA 275:49, any vacation pay, holiday pay, sick pay, bonus pay, personal day pay, employee expenses, and all other fringe benefits earned, accrued, or vested prior to any change shall not lapse due to the change;

Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The proper accrual rate of personal day pay for January, February and March 2014 is four hours per month, pursuant to the prior written policy of the employer. The accrual rate for personal day pay from April 1, 2014, forward is 3.33 hours per month.

The claimant should have accrued 15.33 hours of personal day pay for 2014. The employer, using the 3.33 hour per month accrual in the April 1, 2014, policy, paid the claimant for 13.32 hours of personal day pay. This leaves a balance of 2.01 hours unpaid.

The Hearing Officer finds that based on both written policies of the employer, the claimant proved by a preponderance of the evidence he is due the personal day pay, in the amount of \$43.48 (\$21.63 per hour x 2.01 hours).

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds the employer's argument that they held a genuine belief the vacation pay and personal day pay were paid in full, persuasive. Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due in the time required because the employer had a genuine belief that the vacation pay and personal day pay were not owed.

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 this portion of 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 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 proved by a preponderance of the evidence that he is due personal day pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$43.48.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay vacation pay and personal day pay due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$43.48, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey

Hearing Officer

Date of Decision: September 8, 2014

Original:

cc: Red Hill Insurance LLC dba HPM Insurance

MJD/klt