

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

**V**

**CENTURY MECHANICAL INC.**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Century Mechanical Inc.  
17 Rolinda Ave.  
Concord, NH 03301

**Date of Hearing:** September 3, 2014

**Case No. 48387**

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on July 2, 2014. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on August 5, 2014. The employer did show up for the hearing.

The claimant testified that he worked for the employer for eleven years. There was an employee handbook in place. The claimant stated that his vacation time was accrued in early January. June 17 was the last day of work as the company was closing. The policy was that if an employee left the company you lost your earned time. The claimant feels that he did not leave the company, they closed.

The employer said that the claimant did leave the company because they did not close when the claimant left. It was after that the closing occurred. The employer also testified that for the last four years, the leave was prorated. This practice was placed into the employee handbook.

When the claimant left the company he had already used time and had a balance of 21 hours. This example shows that the claimant had used more days than he had accrued. There is also a policy that if an employee leaves without a two week notice he/she would lose all of their accrued time.

### **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 documents and the testimony provided 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 employer provided credible testimony that there was a policy in place. The policy stated that if an employee left work without a two week notice, the leave was lost. The employer was also credible in the fact that the leave was prorated and that the claimant had used more than his accrual. There was no leave present in his accrual upon separation.

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.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: September 29, 2014

Original: [REDACTED]  
cc: Century Mechanical Inc.

TFH/klt