

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

RAISANEN LANDSCAPING LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation time
RSA 275:48 I illegal deductions
RSA 275:43 V unpaid employee expenses

Employer: Raisanen Landscaping, 256 Daniel Webster Hwy, Merrimack NH 03054

Date of Hearing: October 20, 2014

Case No. 48602

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 1, 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 September 26, 2014.

The claimant testified that he had to have a uniform to work for the company. There was a cleaning agreement that charged the employee \$7.00 per week to have the uniforms cleaned. The price rose to \$9.00 a week later in his employment. The claimant feels that this is unfair and is an illegal deduction from his wages.

The claimant also testified that it was difficult to keep track of time because the employer sometimes issued checks out of different accounts. There was a policy of "banking" time until it was needed so this too led to the confusion.

The claimant stated that he worked for the company for beyond the designated time so he was due one week of vacation time. He said that he did have a break in service but he was promised that he would retain his seniority and is therefore due the week of vacation time.

The claimant also said that there was a personal loan from the employer that he was paying back on a time payment. He believes that this was down to \$629.64 and that it was deducted out of his last wage check. This was not the agreement and to take it from his wages constitutes an illegal deduction.

The claimant also said that he was charged \$69.07 for a missing uniform. He said that he returned the uniform and should not be charged for it.

The claimant said that he was an hourly employee at a rate of \$25.50 an hour. He believes that he has 20.5 hours of "banked" time on the books and because this was worked time it has to be paid.

The employer testified that the uniforms were issued to each employee. The employee had the option of cleaning the uniforms on their own or having the company who owned the uniforms do it for a set weekly price. The claimant opted to have the cleaning service and he brought in his used uniforms to be cleaned weekly.

The employer also testified that there were times when wages were issued outside of the normal payroll company checks but this happened when there was a holiday and employees did not want to wait all weekend before they got paid. The employer said they only did this as a benefit for the employees.

The employer also stated that there was an employee handbook in place and that the employee earned a week of vacation after one year with the employer. When the claimant quit and later was rehired he started the whole year over again. There was no agreement to go outside of the rules for the claimant. There is no vacation time owed because a full, consecutive year was not worked. The claimant signed as having reviewed the handbook.

The employer also said that there was a personal loan made to the claimant. The balance was not taken out of his last paycheck. This is outside of the wage policy and the loan is still owed but it was not deducted.

The uniform that was missing was found and there was no deduction from wages for the uniform.

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.

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.

RSA 275:48 IV. For purposes of this section:

(a) "Plan administrator" means the fiduciary of the plan named in the adoption agreement who has the duties specified in the plan.

(b) "Uniform" means a garment with a company logo or fashion of distinctive design, worn by one or more employees, and serving as a means of identification or distinction.

This part of the law points out where and how deductions can be made from wages.

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.

When an employee suffers expenses on behalf of the employer, the expenses owed become the same as wages when it is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, 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 filed the Wage Claim with a series of charges where he felt he had wages illegally deducted or was not paid all hours worked. The claimant brought up the uniform issue and the cleaning being deducted from wages. The employer was credible in their testimony that this cleaning was an option for the employees and the claimant accepted the cleaning package. There was no charge for the uniform and the cleaning was optional.

The testimony also shows that there were no deductions made for the missing uniform as the shirt and the pants were found and returned.

The employer testified credibly about the separate accounts for some payroll checks. This was done as a benefit to the employees so that they would not have to wait through a weekend when there was a holiday.

The claimant did not prove his point about the vacation time. The rules were clear; the employee had to work for one full year to get the time. The claimant never worked for a continuous year and so there was no time due. The claimant said there was a verbal promise for his seniority to continue when he came back to work but this is not addressed by the employer and is outside of the written policy.

The personal loan is not a wage issue and has not been deducted from the last paycheck. If deductions were made prior to separation of employment, the claimant agreed to these deductions. The loan may still be outstanding but is not a subject for this forum.

The “banking” of time was done and accepted by the employees. The employer submitted a record to show that the “banked” time was paid out. In fact the record shows that it was slightly overpaid.

The Wage Claim is invalid.

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 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.

Thomas F. Hardiman
Hearing Officer

Date of Decision: November 12, 2014

TFH/slh