

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



V

**Blackdog Builders Inc**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Blackdog Builders Inc, 7 Red Roof Lane Unit 1, Salem NH 03102

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

**Case No.:** 48953

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$2,142.40 in unpaid vacation pay. He alleges that he is due the claimed thirteen days of vacation pay because the employer “very conveniently” terminated his employment seven days before his anniversary date when he would have received his vacation pay. He understands he did not make the anniversary date, but feels because he worked almost the full requirement he should get some leeway.

The employer denies the claimant is due any vacation pay under the written policy. The handbook reads, in relevant part, “Vacation is calculated according to your anniversary date as follows: After completion of 5 full anniversary years, you shall be entitled to 13 days of paid vacation annually.” Further, “Eligible employee who provide at least two weeks advance notice of their resignation will be paid for accrued but unused vacation. All other employees will not be paid for accrued but unused vacation upon termination.”

They argue the claimant did not make his anniversary date of May 28. He was terminated by the employer on May 15, 2013, seven days prior to his five year anniversary. The claimant had been notified at the beginning of the year that he should seek other employment and would be kept on during his search. The employer had allowed time for the claimant to find another position because of his wife’s serious health issues. After a few months it became apparent that he did not have any prospects and David Bryan, President of Blackdog Builder Inc, determined his termination date would be May 15, 2013.

### **FINDINGS OF FACT**

The claimant worked for the employer from May 28, 2008 through May 15, 2013, when he was terminated by the employer.

He did not complete five full years of employment.

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

The employer's written policy states, in relevant part, "Vacation is calculated according to your anniversary date as follows: After completion of 5 full anniversary years, you shall be entitled to 13 days of paid vacation annually." Further, "Eligible employees who provide at least two weeks advance notice of their resignation will be paid for accrued but unused vacation. All other employees will not be paid for accrued but unused vacation upon termination."

The claimant did not complete five full anniversary years to be eligible for any vacation pay. The policy clearly states that the vacation pay entitlement is after completion of the five full anniversary years.

Further, the claimant was terminated by the employer. The written policy clearly specifies that vacation pay is not payable upon termination of employment.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the claimed vacation pay under the written policy of the employer.

### **DECISION**

Based on the testimony and evidence presented, 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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Melissa J. Delorey

Hearing Officer

Date of Decision: November 6, 2014