

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



V

**Auto North Preowned Super Store Corp**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Auto North Preowned Superstore Corp, 489 Main St., Gorham,  
NH 03581

**Date of Hearing:** February 9, 2015, record closed March 6, 2015

**Case No.:** 49464

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$2,690.10 in unpaid vacation pay. He argues the employer told him he received three weeks of vacation upon hire on April 14, 2014, and would receive three weeks every year. He used one week in July 2014. Upon his termination on December 1, 2014, the employer informed him he would not receive any vacation time pay out.

He further argues he never received a copy of any handbook and did not know that one existed. He also stated he sat in on interview panels with prospective employees who were told they would receive three weeks of vacation upon hire, just as he had been, without mention of an employee handbook.

The employer argues the claimant began work in April 2014, therefore the three weeks of annual vacation granted to him would have been prorated based on his hire date, or ten days. Further, he argues the claimant used all ten accrued vacation days and is due no further vacation pay.

He stated the he did not have a signed notification from the claimant regarding his receipt or acknowledgement of the handbook. He did state that it is "common knowledge" that a handbook is available in the break room.

The hearing was left open until 4:30pm on February 13, 2015, for the employer to submit an accounting of the vacation days taken by the claimant. The Department received the documentation within the required timeframe. The claimant was given until 4:30pm on March 5, 2015, to submit a response to the employer's exhibits. The Department received the documentation within the required timeframe.

## **FINDINGS OF FACT**

The claimant worked for the employer April 14, 2014 through December 1, 2014, when the employer terminated his employment. His biweekly salary was \$2,691.10.

The claimant provided credible testimony that the employer told him he would receive three weeks of vacation upon hire. He did not see a handbook or other written policy from the employer regarding vacation pay. He did not know that a handbook or other written policy regarding vacation pay existed.

The employer admitted they did not have any signed notification from the claimant regarding his receipt or acknowledgement of the handbook. Though he states that it is "common knowledge" that a handbook is available in the break room.

The claimant argues he used one week of vacation and "a couple of days".

The employer provided credible documentation that the claimant used ten days of vacation during his employment, submitted upon request at the hearing.

The claimant's argument that he was a salaried employee and should have been paid his full salary if he worked at all during the week, regardless of the vacation days taken, is not persuasive. Nothing in the statute prohibits an employer from using vacation time to pay an employee's salary for days they do not appear for work.

The employer submitted credible documentation to show the claimant used ten days of vacation during his 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 failed to properly notify the claimant of the written policy of the vacation policy. The employer read a portion of the written policy how vacation time is granted. The employer did not offer any testimony or evidence regarding a written policy for how vacation time is handled upon separation.

The Hearing Officer finds the claimant proved that it is more likely than not that the employer told him he had three weeks of vacation pay available at his time of hire. The claimant used ten days, or two weeks, of vacation time during his employment. The Hearing Officer finds the claimant proved by a preponderance of the evidence that he is due one week of vacation pay, or \$1,345.05 (\$2,691.10 biweekly salary/2).

## **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, 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 is

owed a portion of the claimed wages/vacation pay, it is hereby ruled that the Wage Claim is valid in the amount of \$1,345.05.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,345.05, less any applicable taxes, within 20 days of the date of this Order.

/s/

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Melissa J. Delorey  
Hearing Officer

Date of Decision: March 17, 2015

MJD/kdc