

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

First Congregational Church of Ossipee

DECISION OF THE HEARING OFFICER

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

Employer: First Congressional Church, 50 NH Rte. 16B, Center Ossipee, NH
03814

Date of Hearing: May 26, 2015

Case No.: 49957

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$15,068.07 in unpaid severance pay. He worked for the employer for eighteen and one half years. He alleged severance had been promised to him by a prior pastor.

At the hearing, the claimant amended his claim to \$11,619.57 as he received a check for \$3,448.50 gross in severance payments from the employer. He amended his statement that he believes he is due the balance of the severance pay based on promise of severance pay from a prior pastor. He now states he is due the severance pay based on the June 2014 written policy of the employer.

The claimant believes he should be granted severance pay for not only the length of time he worked for the employer, but because he provided his own truck for the employer's use at no cost to the employer. He also did not charge the employer for all time actually worked as there were many occasions he received calls from the police department or employees who needed items quickly and he lived "within three minutes" of the Church.

The employer denies the claimant is due any severance pay as they terminated his employment for disciplinary reasons.

The employer's written policy disallows severance for employees who resign or are terminated for disciplinary reasons. Employees whose employment is terminated for other reasons, may, at the discretion of the Leadership Council, receive severance pay.

FINDINGS OF FACT

The claimant worked for the employer for approximately eighteen and one half years until the employer terminated his employment on October 8, 2014.

The claimant argues he is due severance pay under the written policy of the employer. He further argues that the employer provided erroneous disciplinary actions so they did not have to pay severance to him under the written policy.

The written policy states, in relevant part, "The Leadership Council may, at its discretion, grant employees severance pay at the rate of one week of pay per year of service given to FCCO. Employees are eligible to receive severance pay when they have not been terminated due to disciplinary action and when they did not terminate of their own accord."

The claimant signed an acknowledgement of the written policy on June 24, 2014.

The claimant's argument that the disciplinary action items were made up is not persuasive in this matter. The issue for this Department is not whether or not the employer correctly terminated the claimant for disciplinary actions, but whether a termination for disciplinary action is subject to the award of severance pay.

The written policy clearly informs the claimant that he is not entitled to severance pay if his termination is because of a disciplinary action. Further, even if the claimant had been terminated for a reason other than a disciplinary action, the written policy states that "The Leadership Council may, at its discretion, grant employees severance..." The Leadership Council would be within its rights to exercise its discretion and choose not to grant severance pay to an employee.

The employer did pay the claimant \$3,448.50, gross, in severance pay, in order to assist the claimant after his termination.

The Hearing Officer finds the employer properly notified the claimant of the written policy regarding severance pay. The employer notified the claimant his termination was the result of a disciplinary action.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed severance pay under the written policy of the employer.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant did not meet his burden in this claim.

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 that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed severance pay/wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 29, 2015

MJD/kdc