

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

FANTINI BAKING COMPANY

DECISION OF THE HEARING OFFICER

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

Employer: Fantini Baking Co, 375 Washington St, Haverhill, MA 01832

Date of Hearing: December 21, 2015

Case No.: 51823

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 5, 2015. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on December 2, 2015. The employer did send in an objection after the Notice of Hearing.

The claimant testified that he worked for the employer for over ten years. He further testified that there was no employee handbook in place. He is seeking accrued vacation time of \$2,900.00.

The claimant testified that he had to work one full anniversary year in order to receive vacation time. The time was placed on his record after the year was worked. Because of his tenure with the employer he was accruing three weeks of vacation time. The claimant testified that on November 1, 2014 he accrued the three weeks of time. Because he terminated on February 1, 2015 the claimant said that he was only paid for one week of the accrued time.

The employer testified that there was an employee handbook in place. The policy was that the employee started to accrue vacation time when the employee reached their first anniversary date. During the first year of employment the employee was not given any vacation time. The employer stated that they paid the claimant for one week of vacation time because he had worked almost a third of the year before he resigned his position with the company.

The employer maintains that the leave is accrued over the year and if an employee leaves before an anniversary date there is no payout of leave. In this case they gave the claimant one week because of his tenure and the fact that he almost worked for a third of the year.

FINDINGS OF FACT

RSA 275:43 I Weekly 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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

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 submissions and the testimony of the parties, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant testified that there was no employee handbook in place. The employer said that there was a handbook and it was signed by the claimant. A handbook was not presented for the hearing.

The claimant said that he worked for over ten years with the company. It was his understanding that you had to work for a year and not take any leave; at that point you would be eligible for a full accrual of leave. It was this premise that led the claimant to believe that on November 1, 2014 he had three weeks of vacation time.

The employer stated that the time starts on your anniversary date and as of February 1, 2015 the claimant did not have three weeks of leave and although they paid him for one week, they were under no obligation to do so.

The Hearing Officer finds that in the absence of any written policy and based on the claimant's tenure with the employer, he worked with the understanding that after the first year he received all of his leave. There was no record that the time is accrued by the month and so the claimant rightfully expected to have three weeks at the November 1, 2014 anniversary date.

The employer is required to have written policies and have the policies known to the employee. In this Wage Claim there is no record that this was done and the claimant was credible in his belief that he had all of the time on the books based on his employment time.

The Wage Claim is valid in the claimed amount of \$2,900.00.

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 this Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$2,900.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$2,900.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 7, 2016

TFH/slh