

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

CCG Signs LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid severance pay
RSA 275:43 V unpaid vacation pay
RSA 275:43-b unpaid salary
RSA 279:21 VIII unpaid overtime pay

Employer: CCG Signs LLC, 19 Nimble Hill Rd, Newington, NH 03801

Date of Hearing: January 13, 2016

Case No.: 51859

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$484.62 for three days' severance pay between December 29 and 31, 2014; \$1,615.38 in unpaid vacation pay; \$1,413.48 in unpaid salary; and \$11,355.00 in unpaid overtime pay.

At the hearing, the claimant removed the claim for overtime pay.

The employer denies the claimant was not paid for all time worked. He asserts he noticed the claimant she would be paid her "regular pay schedule through December 31" and as they were closed between Christmas and January 5, she received pay for the regular schedule. The claimant did not have any vacation or sick time remaining and their policy is "use it or lose it." Further, the claimant worked a reduced schedule for several weeks during which her salary had been reduced based on a verbal discussion. No overtime is due as the claimant was always a salaried employee.

FINDINGS OF FACT

The claimant worked for the employer for more than ten years. She received a biweekly salary of \$1,615.38. On November 2, 2014, the employer offered a severance package to the claimant to pay her regular salary through December 31, 2014. The claimant accepted. The employer paid the claimant through December 26, 2014, as they were then closed until January 5, 2015.

The claimant argues she is due severance pay for December 29 through December 31, 2014. The employer argues the business is closed between Christmas and New Year's, therefore, the claimant received regular pay through December 31, 2014, as stated in his text messages, previously submitted.

The employer provided a written notice to the claimant, in accordance with RSA 275:49, regarding her severance pay. The notice expressly noted the claimant would receive her regular salary through December 31, 2014. The employer did not qualify that statement to indicate that the company closed for a period of time and in effect, did not count, in her severance pay. The employer admitted he did not properly document the offer.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed severance in the amount of \$484.62.

The claimant argues she is due \$1,615.38 for two weeks of vacation pay upon her separation of employment. The employer initially argued the claimant did not have any vacation pay available. He now acknowledges she is due 13/16 of one day of vacation pay.

Neither party produced contemporaneous records of vacation time taken by the claimant.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she is due the claimed vacation pay. The Hearing Officer finds that the claimant failed to meet that burden of proof as her story is only as credible as, not more credible than, the employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that she is owed the total amount of the claimed vacation pay.

Based on the credible testimony of the employer, the Hearing Officer finds the claimant is due 13/16 of one vacation day, or \$131.25 ($\$161.54 \times 13/16$).

The claimant argues she is due \$1,413.48 in unpaid salary for seven or eight weeks in 2013 and 2014, during which the employer reduced her salary.

The employer argues the claimant needed to take time off for several weeks. They had a verbal agreement to reduce the claimant's salary during those weeks in which she worked a reduced schedule.

The claimant was unable to articulate the days or weeks during which these reductions occurred. She also did not know her rate of pay during these periods but based her claim on her 2014 salary.

RSA 275:43-b requires that an employer pay a salaried employee their full salary for any pay period in which the employee performs any work. It also allows employers to make deductions to a salaried employee's wages under certain circumstances, but none of those exceptions apply to the facts of this case.

Nothing in RSA 275:43-b precludes an employer from changing an employee's rate of pay based on a change in schedule.

RSA 275:49 requires an employer to notice an employee in writing of any change in pay. The employer did not reduce the change to writing, however, he did provide credible testimony that he and the claimant had discussions regarding the reduction in her schedule and agreed to reduce her salary during those weeks.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed salary.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 V considers severance 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 she is due the claimed severance pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$484.62.

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 she is due a portion of the claimed vacation pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$131.25.

As RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$615.87 (\$484.62 + \$131.25), less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 29, 2016

Original: Claimant
cc: Employer

MJD/aph