

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SKY MEADOW COUNTRY CLUB

DECISION OF THE HEARING OFFICER

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

Employer: Sky Meadow Country Club, 6 Mountain Laurels Drive, Nashua, NH 03062

Date of Hearing: January 26, 2016

Case No.: 51917

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 23, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on January 6, 2016.

The claimant filed the Wage Claim in the amount of \$3,500.00. At the start of the hearing the claimant testified that he made an error in the bonus portion of the claim and that the total Wage Claim was for \$2,500.00. This reflects a \$1,000.00 bonus and \$1,500.00 in accrued leave time.

The claimant testified that he worked for the employer from February 2, 2015 until October 31, 2015. The claimant stated that there was a hiring agreement in place. He was a salaried employee.

The claimant did testify that there was nothing in writing about when the "bonus" would be paid. However, in his Wage Claim the claimant referred to the "bonus" as a Christmas Bonus. The claimant was terminated from his position as of October 31. He feels that the bonus should be paid because he worked for the majority of the year.

The claimant further testified that he had a written hiring contract that gave him two weeks of vacation time in his first year. He stated that he did take one half day off during his employment. The claimant testified that he had to apply for time off in writing and he did change his schedule to get time off from certain events. However, he never took off a full pay period.

He further testified that there is no written language in the hiring agreement that states the time is lost if not used.

The employer testified that there was a Christmas Bonus plan in place where the owner asked each club member to contribute to the Christmas Bonus. If the member's contributions did not equal the total bonus for each employee the employer would make up the difference. The employer testified that the bonus was given only to employees who were employees around Christmas time. The claimant had separated service in October and therefore was not an employee when the bonus was issued.

The employer testified that their leave policy was a liberal one for management staff employees. The claimant's contract did give him two weeks for the first year of work but the written policy stated that the leave was to be taken when the off season occurred. The claimant was not employed during the off season. His employment had been terminated.

The employer testified that the claimant was a salaried employee and that there were times during his employment where he was not scheduled at his request. Because he was a salaried employee these scheduled breaks were given and paid because they never constituted an entire pay period. The claimant always worked part of the pay period and received his full salary.

The employer testified that they notified the claimant, on October 5, 2015, that he was not going to be employed after October 31, 2015. The claimant was allowed to take time during this period to participate in job searches and interviews.

The employer stated that the claimant was not allowed to use his two weeks because he had not earned them but he did get time off upon request for several functions. These dates of time off were not deducted from vacation time. The employer also stated that the claimant was not eligible for the Christmas Bonus because he was not an employee during the Christmas holiday.

FINDINGS OF FACT

RSA 275:43 I 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.

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. Any bonus plan is considered under this section of the law when the bonus is due and owing as the bonus is equivalent to wages.

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 invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The employer provided credible testimony about the bonus situation. It was a plan that the employer has power to grant or not grant. The filed wage claim and testimony establish that it was called a Christmas Bonus. Additionally, the testimony provided establishes that pattern/practice was that it was paid to employees of record at the time of distribution. Here, it was clear that the claimant was not an active employee at the time of the distribution of the bonus. Accordingly, this part of the Wage Claim is invalid.

The claimant testified that he was under a hiring agreement that gave him two weeks of vacation time. There was not written documentation that if the employee was terminated in the first year, the leave was paid. In fact the only written policy for vacation time clearly spelled out when the leave could be taken and the claimant was not working during the available time frame.

The employer was also credible that there was time off given during the golfing season and because the claimant was a salaried employee they did give some time off upon request. The employer said that the claimant was given time off for his wedding, a weekend away at a later date and time to participate in interviews.

There was no evidence that the time was to be paid out in the first year of employment. This part of the Wage Claim is also invalid.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: February 12, 2016

Original: Claimant

cc: Employer

TFH/aph