

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



**V**

**Landair Express of New England LTD**

**DECISION OF THE HEARING OFFICER**

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

**Date of Hearing:** March 9, 2016

**Case No.:** 52113

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of his wage claim, that he was owed \$420 in unpaid wages; \$500 in unpaid safety bonus (\$250 for 2014 and 2015 each); \$3,360 for three weeks of unpaid vacation and one week and one day for safety bonus vacation pay; and \$160 in unpaid holiday pay.

The claimant amended the claim at the hearing, removing the \$420 in unpaid wages as he received those wages on January 13, 2016.

The claimant testified that the employer notified him on December 29, 2015, that they would not be working indefinitely. The claimant had already been scheduled to retire on January 8, 2016. Though the employer called some employees back to work on January 7, 2016, the claimant was not called back, "probably because I was due to retire."

He argues he is due \$500 in unpaid bonus for a Safety Bonus program which awarded him \$250 for each of the years 2014 and 2015.

The claimant argues he was due to receive three weeks of vacation pay for 2016 under the written policy. He also argues that as part of the Safety Bonus program he earned one week and one day of additional vacation pay.

He argues he is due one day of holiday pay for January 1, 2016.

The Federal Motor Carrier Safety Administration (FMCSA) shut the employer down due to violations on December 27, 2015. The employer laid off many employees, including the claimant, on December 29, 2015.

The employer admitted they were initially unable to make the payroll as claimed by the claimant, however they paid the claimed wages on January 13, 2016.

As the claimant was not employed on January 1, 2016, he was not eligible to receive the holiday benefit.

The employer argues the safety program is not in writing and is at the discretion of each individual terminal. Each terminal determines whether they will or will not participate in a safety program and each participating terminal's program is at the discretion of its management. The employer argues the claimant did not earn the \$250 bonus for 2014 as he did have a safety issue. The safety bonuses are paid out in December of the year following. If the claimant is due any safety bonus for 2015, it will be paid out in December of 2016.

They further argue the claimant is not due any vacation pay under the written vacation policy.

### **FINDINGS OF FACT**

The claimant worked for the employer from September 27, 2004 through December 29, 2015, when the employer notified him that he would not have any work for an indefinite period of time. The claimant had already scheduled to retire on January 8, 2016. The claimant never returned to work.

The claimant argues he is due \$500 for two annual \$250 safety bonuses for 2014 and 2015, as well as one week and one day of additional vacation pay awarded as part of the Safety Bonus program.

The employer argues the claimant did not earn the \$250 bonus for 2014 as he did have a safety issue. The safety bonuses are paid out in December of the year following. Therefore, if the claimant is due any safety bonus for 2015, it will be paid out in December of 2016.

The Hearing Officer finds the employer provided credible testimony that the claimant did not earn a 2014 safety bonus and that the 2015 safety bonus payment is not due until December 2016. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed safety bonus for 2014 or 2015.

The claimant argues he is due one week and one day of additional vacation pay awarded as part of the Safety Bonus program. He was not able to articulate how the program worked concerning the award of vacation pay.

The employer argues the safety program is not in writing and is at the discretion of each individual terminal. Each terminal determines whether they will or will not participate in a safety program and each participating terminal's program is at the discretion of its management.

The employer failed to comply with the notification requirements in RSA 275:49 and Lab 803.03 (b) for the safety program. However, the claimant has the burden to prove he had earned the additional vacation days pursuant to the safety program.

The Hearing Officer finds the claimant failed to meet that burden as his story is only as credible, not more credible, than the employers. The claimant has the burden to prove he has accrued the Safety Bonus vacation days and that the days are due to him. He did not meet this burden. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed vacation pay under the safety program.

The parties agree that the claimant was not employed on January 1, 2016.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the holiday pay as he was not employed on the date of the holiday.

The claimant argues he is due three weeks of vacation pay for 2016 as he worked all of 2015.

The employer argues the claimant did not work all of 2015, and under the written policy is not eligible for vacation time.

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 properly notified the claimant of the written policy regarding vacation pay. The policy states, in relevant part, "Vacation time with pay is available to full time and part time employees who (1) have successfully completed an introductory period and (2) are employed as of January 1<sup>st</sup> in the year in which the vacation time is taken".

Because the employer laid the claimant off on December 29, 2015, he was not employed on January 1, 2016, to be eligible for the 2016 vacation pay.

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

### **DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages, including bonus, 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 wages or bonus, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers holiday pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any holiday pay, it is hereby ruled that this portion of the Wage Claim is invalid.

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 failed to prove by a preponderance of the evidence that he is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: March 15, 2016

Original: Claimant  
cc: Employer

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