

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

P&D PACKAGE DELIVERY SERVICES INC

DECISION OF THE HEARING OFFICER

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

Employer: P&D Package Delivery Services Inc., 1425 Main St., Bethlehem NH 03574

Date of Hearing: March 2, 2016

Case No.: 52153

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on January 14, 2016. The notice was sent to the employer and there was no written objection filed on the Wage Claim. The Notice of Hearing was sent to both parties on February 9, 2016. The claimant was telephonic for the hearing and the employer was represented at the hearing. The claimant is seeking \$700.00 in vacation time.

The claimant testified that he worked for the employer for almost four years. The last year he was working under a written agreement that he did not sign but he was aware of it. The claimant testified that under the new agreement he earned time off if there were no violations of company policies.

The claimant testified that he reported accidents and that any delivery violations were noted by the employer. The claimant feels that the employer should not be allowed to take away earned time to offset customer complaints or accidents. The claimant testified that he learned that the employer could not do this through a call to the Department of Labor.

The employer testified that they instituted a new pay plan that paid a daily rate and incentives for certain amount of stops/deliveries. The claimant was aware of the new pay plan. The employer testified that there was no formula for leave time. The time given was for performance and was a management prerogative. The leave was also used to offset any complaints about deliveries and any accidents to company vehicles.

The employer testified that once the new pay structure was in place the claimant worked under it. There were several problem areas that were addressed and there was a disciplinary

loss of vacation time and in at least one case the time was restored. The employer further testified that the claimant did not lose any leave time before he was terminated. The termination occurred because of two accidents in a short period of time. This was factored in with customer complaints and so the termination was issued.

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.

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 Hearing Officer finds that there was no guarantee of vacation time and no accrual formula in place to show how vacation time is earned. The claimant worked on a daily rate and an incentive for making a certain amount of stops during the day.

The employer was credible in his testimony that the wage plan did not include leave time but an employee could earn time off, a management prerogative, for an error free and accident free work performance. All instances of problems were evaluated by management and the issuing of time off was left to management to decide. There was no evidence that the claimant ever lost any time off.

The claimant's presented claim showed that he was given sick time and any requested time. There is no decision on the question that the pressure to sign the new wage plan was to be offset by a lay-off threat. This never happened.

The Wage Claim is invalid.

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 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 the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 22, 2016

Original: Claimant
cc: Employer

TFH/aph