

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



**V**

**JOHN SHERMAN & SON INC**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** John Sherman & Son Inc., 68 S. Main St., Rochester, NH 03867

**Date of Hearing:** March 16, 2016

**Case No.:** 52225

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on January 29, 2016. 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 February 25, 2016.

The claimant testified that she worked for the employer for about eight years. She was an hourly employee and received a rate of \$18.00 per hour. The claimant further testified that when she started to work for the employer there was a handbook in place. At that time the policy was that accrued leave was paid out upon separation.

The claimant testified that during her employment, no employees were let go with vacation time on the books. The claimant was terminated in January of 2016 and it was in January that she received her accrual of two weeks of vacation time.

The employer testified that the first year of one's employment there was no accrued leave. The accrual did not start until the second year. The claimant was laid off because of the business producing less and less business. The employer testified that the claimant was paid an extra four days upon separation and that her health insurance was paid through the month of January.

The employer also brought forward, in the objection letter, that the claimant was the person who kept track of time and wages. When the claimant was to be laid-off, the employer had conversations with her about her years of service and the fact that they were going to pay her for an additional four days on the final week. The employer also mentioned the insurance coverage for the last month.

The employer wrote that the claimant never mentioned a payout of vacation time during her talks with the employer. It was not until after she left work that the issue came up.

### **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 part 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 and 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 said that there was a written employee handbook when she started but neither side produced a written policy that stated leave was to be paid out upon separation.

The employer was credible in their written statement that the claimant worked with the record keeping section of the business and that she did review her severance deal with the employer. The issue of vacation time was not raised until after the separation when the four extra days were paid and the insurance was covered for the month.

There should be written policy and procedures but absent the written document the intent of the employer comes into play. It is found in this claim that the employer intended to have the employee accrue time as they went along into the year and the payout of four extra days, in the last week, was above any accrual for the first month of the year.

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 as 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 she is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: March 29, 2016

Original: Claimant  
cc: Employer

TFH/aph