

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Private Jet Services LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Private Jet Services LLC, 5 Batchelder Rd, Seabrook NH 03874

Date of Hearing: June 14, 2016

Case No.: 52719

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$3,100 in unpaid “comp time” wages for hours worked between January and March 2016. She argues she earned a “comp day” for each weekend day that she worked, for a total of twenty-one days, which the employer failed to pay to her upon her separation from employment.

The employer denies the claimant is due any payment of “comp time” not used. The claimant was a salaried exempt employee. While the company provides “comp time” when an employee works on a weekend day, the time does not accrue and does not have any cash value.

FINDINGS OF FACT

The claimant worked for the employer from December 2013 through March 28, 2016, when she resigned. She agrees she was a salaried employee throughout her employment.

The claimant argues she had twenty-one days, or \$3,100, of “comp time” accrued and it had always been the standard practice for the employer to pay unused “comp time” on the books when an employee terminated. She previously provided notarized statements from two prior employees who stated they had received payments of unused “comp time” upon separation of employment.

The employer argues that the section of the employee handbook which discusses the “comp policy” does not speak to an accrual of time nor to any payment of “comp time”.

RSA 275:49 I requires that an employer inform employees of the rate of pay at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes.

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 notifications pursuant to RSA 275:49.

The employer properly notified the claimant of her salaried rate of pay upon hire. The claimant agrees she was a salaried employee and received her regular wages each pay period, as defined in RSA 275:42 VI.

The claimant argued that the employee handbook in force at her time of her hire did not discuss exempt or non-exempt employees. The handbook also did not provide for any "comp time" policy. It is noted the handbook she referenced was for Private Jet Services Inc, not Private Jet Services LLC.

The employer previously provided an employee handbook, for which the claimant did sign an acknowledgement on December 16, 2013, which also references Private Jet Services Inc.

The handbook makes only one reference to "comp time" as follows, "D. Categories of Employment - Employees may be eligible for comp time. Employees may take one comp day for a weekend day worked. Comp days should be taken within the same work week as the weekend day worked, whenever possible. Employees are required to obtain prior approval from their supervisors prior to taking a comp day."

Pursuant to RSA 275:43-b I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked. As such, the claimant already received her full wages for the weekend days she worked. The employer offered a benefit of taking additional time off for weekend work performed. The employer did not provide notice to the claimant that the "comp time" accrued" or had cash value.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed "comp time" wages.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet her burden in this claim.

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 this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 23, 2016

Original: Claimant
cc: Employer

MJD/aph