

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

US SECURITY ASSOCIATES

DECISION OF THE HEARING OFFICER

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

Employer: US Security Associates, 11 Industrial Way, Salem, NH 03079

Date of Hearing: June 13, 2016

Case No.: 52721

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 20, 2016. The notice was sent to the employer and there was no written objection to the Wage Claim. The Notice of Hearing was sent to both parties on May 20, 2016. The employer did show up for the hearing.

The testimony shows that the claimant started to work for the employer in June of 2011. He resigned from his employment on September 5, 2014. The claimant testified that when he started the job, he was paid \$14.00 per hour and received 1.00 hours of Paid Time Off (PTO) per week. The claimant testified that when he started his employment he tried to negotiate a higher hourly rate but was told that it could not be done, however, they did offer a higher PTO accrual rate of 1.54 hours per week to be taken after one year on the job.

The claimant testified that he was raised to an hourly rate of \$14.50 after he completed his supervisory training and became a supervisor. He continued to work under this pay scale and with the benefit package he was receiving.

The claimant testified that he resigned his supervisory position and claimed that his hourly rate should not have been reduced because the employer did not notify him in writing of the change. The claimant also claimed that his weekly accrual for PTO should not have been reduced to an hour per week when the current employer took over the company. The claimant maintains that he received a notice that he was going to be allowed to keep his leave accrual as it had been with the previous owner.

The employer testified that when they took over the company their PTO accrual was at one hour per week. The memo that was sent out was notifying the employees that they would be allowed to keep their accrued leave at the total they had accrued under the previous owner.

The employer testified that the new accrual rate started when the transition to the new owner took place. The claimant was allowed to keep his old total accrual of PTO but did go into the new benefit package once the transition took place. The claimant was aware of this by the new accrual rate kept on the pay check.

The employer also testified that the claimant was raised to the higher hourly rate when he completed his supervisory training and assumed the higher position. When the claimant voluntarily resigned his supervisory position he went back to his old rate as an officer. The paycheck reflected this change every time he received a pay.

The employer maintains that the claimant has been made whole and was paid all wages due at the time the work was performed.

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 or accrued Paid Time Off as 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 claimant has tried to show that he was not made aware of any changes to his leave accrual or his pay scale. The finding is that the claimant was aware of the changes and did not interpret the rules as they are written to his own belief. The Hearing Officer finds that the claimant was aware of the changes during his period of employment with the company.

The employer was credible in their testimony that the company followed the rules that were known to the claimant. Specifically the claimant did receive a document that the new employer had a different (lower) rate of accrual of leave time.

The employer was also creditable in saying that after advent of new ownership employees were notified that they agreed to keep the Andrew's accruals in place but the new rates would be in place going forward. In sum, based upon the information presented, it is found that the claimant did have knowledge of the change on the accrual rates. The claimant worked with the new rate for March of 2012 until he resigned in September of 2014.

The claimant was also aware of the change in the hourly rate because he was promoted from an officer's position to a supervisory position. This promotion resulted in a wage increase and this was reflected every time he was paid. When the claimant resigned his supervisory position, he in fact left the higher hourly rate. The change was reflected every time the claimant was paid.

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 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.

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: July 1, 2016

Original: Claimant
cc: Employer

TFH/aph