

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



**V**

**Rochester Truck Repair LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay  
RSA 275:48 I/II illegal deductions  
Interest

**Employer:** Rochester Truck Repair LLC, 162 Chestnut Hill Rd, Rochester, NH 03839

**Date of Hearing:** September 7, 2016

**Case No.:** 53156

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$1,643.00 in unpaid vacation pay upon his separation from employment.

The employer denies the claimant is due any vacation pay as the New Hampshire 7<sup>th</sup> Circuit Court – District Division – Rochester, already awarded the vacation pay to the employer to keep in lieu of the repayment of a loan on June 3, 2016.

**FINDINGS OF FACT**

As this case has already been decided by New Hampshire 7<sup>th</sup> Circuit Court – District Division – Rochester on June 3, 2016, pursuant RSA 275:53 I, this Department no longer has jurisdiction.

However, in the absence of this Decision, the Hearing Officer would have found the claimant failed to prove by a preponderance of the evidence he was due the claimed vacation pay under the written policy of the employer.

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 noticed the claimant of the written policy regarding vacation pay which reads, in relevant part, "Employees who leave the company in good standing will be paid for vacation earned but not yet taken."

The parties agree the employer terminated the claimant for theft, though the claimant disagrees that he stole any items from the employer.

As it is reasonable to consider the claimant's status as not in good standing after termination for theft, the employer would not be required to pay any earned vacation pay upon the claimant's separation from employment.

### **DECISION**

As this case has already been decided by a court of competent jurisdiction, this Department lacks jurisdiction in this case.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: September 19, 2016

Original: Claimant  
cc: Employer

MJD/das