

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



**V**

**Shaker Regional School District**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Shaker Regional School District, 58 School St, Belmont, NH 03220

**Date of Hearing:** November 29, 2016

**Case No.:** 53899

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserted, through the filing of his wage claim, that he was owed approximately \$1,476.92 in unpaid wages for June 27 through June 30, 2016. He further argues he is due thirteen days of vacation pay at a rate of \$369.23 per day, due upon his separation of employment.

At the hearing, the claimant removed the claim for wages for June 27 through June 30, 2016.

The employer denies the claimant is due any vacation pay pursuant to their policy and practice.

**FINDINGS OF FACT**

The claimant worked for the employer for eight years as Assistant Principal and his last four years as Principal until his retirement on June 21, 2016, his 260<sup>th</sup> contractual day of his contract.

The claimant and the employer had an email conversation between August 6 and 12, 2015, because he would be retiring at the end of the 2015/2016 school year. He inquired about the payout of his vacation pay upon retirement as he wished to "maximize" his payout for his retirement. The employer notified the claimant their policy and practice since 1988 has been to only pay out a maximum of ten days of vacation pay when an employee separates. The claimant asked for a written policy of this practice, and the employer admitted there was no written policy.

The claimant received a payment for ten days of vacation pay upon his retirement.

The claimant argues because the employer did not have a written policy stating that they only pay a maximum of ten days, they are required to pay the full accrued balance of thirteen days.

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 argues they have a written policy regarding vacation pay within the claimant's signed 2015/2016 contract, which states, in relevant part, "Vacation Leave – 20 days per year subject to the terms in Section 6(c) of this contract. Up to ten days may be carried over from previous year, if unused." (Section 6(c) discusses termination prior to the end of the contract year, which does not pertain to this claim).

The employer provided credible testimony that they interpreted the written vacation policy carryover of a maximum of ten days to also only pay a maximum of ten vacation days at separation of employment. She also provided credible testimony that they had never had an employee separate with greater than ten vacation days as their interpretation of the policy had always been explained to employees planning to separate, and they spent down their vacation days during employment to have a balance of no more than ten days upon separation.

The employer's representative has been employed by the school for twenty-nine years, the last nineteen years in the current position of Business Administrator, and her duties were to handle payroll and issue contracts to employees.

The claimant's testimony that, in his eight years as Assistant Principal and four years as Principal, he was unaware of the policy regarding vacation pay at separation is not found persuasive. The claimant was intentionally vague in his responses upon examination of this issue.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed vacation pay under the established interpretation of written policy and past practice of the employer.

### **DISCUSSION**

The burden of proof lies with the claimant in these matters. The claimant has the burden to prove by a preponderance of the evidence that the claimed wages are due. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant failed to meet this burden.

## **DECISION**

Based on the testimony and evidence presented, 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.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: December 6, 2016

Original: Claimant  
cc: Claimant's Attorney  
Employer  
Employer's Attorney

MJD/das