

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

DUSTYOLDCARS.COM

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid sick leave

Employer: Dustyoldcars.com, 27 Airport Road, Nashua, NH 03063

Date of Hearing: December 27, 2016

Case No.: 54259

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 31, 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 December 1, 2016.

The claimant testified that the Wage Claim is for \$1,187.50. He worked for the employer for over a year and was in a salaried position. He was paid on a bi-weekly basis. The claimant testified that he was laid off from his position. The last check that he received was for \$581.00 after taxes. The claimant did say that he was under a Personal Time Off (PTO) policy.

The claimant, in the written Wage Claim is seeking three days of sick time that he took during his last week of employment. The claimant also stated that he was laid off on the 21st of September and the pay period ended on the 23rd of September. The claimant is seeking the three days of sick time during his last week of employment.

The employer testified that the claimant was a salaried employee but he earned his PTO at a rate of 2.31 hours per pay period. In six months of employment the claimant took five days off which left a negative balance of 3.04 hours. During the last pay period in September, the claimant took another five days of sick leave. The employer testified that, upon separation, the claimant owed the company 64.03 hours of PTO beyond the actual accrual. The last check was for \$581.00 after taxes.

FINDINGS OF FACT

275:43-b Payment of Salaried Employees. –

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; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

(a) Any pay period in which such employee performs no work.

(b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.

(c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.

(d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.

(e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This is the part of the law that governs the payment of salary for an employee holding a salaried position.

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 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 has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant was seeking three days of sick leave that he took during his last week of employment. As a salaried employee he did work part of the last week and so he should have been paid a full salary.

The employer was credible in their testimony that there was an accrual policy in place and that the claimant far exceeded the total time during his employment. The employer did state that because of a hardship, they paid the claimant a payout of 30 hours that they did not owe; as they did not want to leave the claimant in a bad situation.

The extra payment of thirty hours covered the three days being sought in the Wage Claim. The Wage Claim is invalid because the claimant did not bear his burden to show where the money was due. The employer provided credible testimony that they paid extra in the last pay period.

DECISION and ORDER

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.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 24, 2017
Original: Claimant
cc: Employer
TFH/das