

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

BARON'S MAJOR BRANDS

DECISION OF THE HEARING OFFICER

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

Employer: Baron's Major Brands, 399 East Industrial Park Drive, Manchester, NH 03109

Date of Hearing: January 4, 2017

Case No.: 54267

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 2, 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 8, 2016.

The claimant testified that he worked for the employer for three years. He was a salaried employee who worked under a policy and procedure handbook. The Wage Claim is for accrued vacation time. The time was accrued on a weekly basis and a portion could be carried over from year to year. The claimant further testified that his salary broke down into an hourly rate of \$35.62. When he separated from employment, his last check showed a balance of 198.32 hours of accrued vacation time. The Wage Claim is for \$7,065.00 in accrued time.

The claimant testified that he took time off from work but was often available for when unforeseen situations arose. He testified that he was basically on call for 24 hours a day. The claimant did say that he was aware that when accrued flex time is used up, the leave switches to accrued vacation time.

The employer testified that they took a lot of pride in their record keeping detail. The employer testified that the claimant took off more time than he earned. He was paid for the time off. It is the position of the employer that when the claimant separated from his position with the company he had two days left on the record. He was paid for those days.

The employer feels that the rules are clear about the use of flex and vacation time. The claimant, by asking for this Wage Claim is in sense, asking to be paid twice for the time off. The

employer said that there are no time cards and the payroll system does not deduct total hours used for time off.

The employer feels that the claimant was aware of the time he was taking off because he called in when he was not coming into work and he knew the policy of the company in regards to leave time. The claimant was paid for all time actually worked and was paid for his full schedule for all time worked.

FINDINGS OF FACT

275:43 Weekly. –

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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund

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 earned 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 is relying on the printed accrual on each paycheck. The employer was credible in their testimony that this was a total and did not record an accurate usage of the leave. Both parties agreed that there were written policies and procedures in place.

One of the policies dealt with flex time. The policy was clear in its' intent. Flex time was to be used for random days off. However, if the flex time ran out, then accrued leave would be used instead. In this claim, the claimant used all but two days of accrued time when he called in that he would be out of the office. This practice was in compliance with the written policy.

The claimant's position is that his paycheck reported his accrued leave. This is a guideline but it is not in step with the written policy of the company. The fact that the time was used to offset days off was a written policy and known to the claimant.

The Wage Claim is invalid.

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