

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Three Chimneys Inn LLC

DECISION OF THE HEARING OFFICER

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

Employer: Three Chimneys Inn LLC, 17 Newmarket Rd, Durham, NH 03824

Date of Hearing: February 14, 2017

Case No.: 54394

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$3,732.00 in unpaid vacation pay and \$24,885.00 in unpaid severance pay, upon his separation from employment.

The employer denies the claimant was not paid for all vacation pay due. Further, the claimant did not sign the requested release to receive the severance pay, pursuant to the release agreement.

FINDINGS OF FACT

The claimant worked for the employer from June 2006 through October 28, 2016, when the employer terminated his employment.

The claimant argues he is due \$3,732.00 in unpaid vacation pay and \$24,885.00 in severance pay upon his separation pursuant to an agreement the claimant drafted during his employment. The claimant agrees the employer did not sign the agreement but that George Peterson "basically okayed it." The claimant does agree he received vacation pay as calculated in the employer handbook, however, he argues he should be paid the vacation pay as he outlined in his drafted agreement, which is a larger amount.

The employer argues that they never accepted or agreed to the claimant's drafted agreement for increased vacation pay or severance pay.

The claimant received vacation pay pursuant to the written policy of the employer, not the claimant's drafted agreement. The claimant signed an acknowledgement for the employee handbook on June 17, 2006.

The claimant refused to sign the release offered by the employer, in order to receive a severance package which they offered.

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 vacation policy and practices. They also paid the claimant pursuant to the employee handbook policy and practices.

The claimant's argument that the employer "basically okayed" the agreement which the claimant drafted, is not found persuasive. The parties never had a "meeting of the minds" as to the items in the drafted agreement.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed vacation pay.

The New Hampshire Supreme Court determined in ACAS Acquisitions (Precitech) Inc. v. Stephen C. Hobert 155 N.H. 381 that, "We agree with the trial court that because severance benefits were offered only in connection with the sale of Precitech and only then to a few employees on terms negotiated individually with those employees, granting severance benefits was not a matter of practice or policy at ACAS. Therefore, we conclude that the defendant's severance benefits do not meet the definition of wages in RSA 275:42, III and RSA 275:43, III (now RSA 275:43 V). "

Because of this conclusion, the Hearing Officer finds that the severance pay offered to the claimant was not "wages" and, therefore, is not within the scope of jurisdiction of a Wage Claim

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 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 this portion of the Wage Claim is invalid.

As RSA 275:51 V affords the Wage Claim process for wages only, it is hereby ruled that the portion of the Wage Claim for severance is invalid due to a lack of jurisdiction by this Department.

Melissa J. Delorey
Hearing Officer

Date of Decision: March 7, 2017

Original: Claimant
cc: Employer

MJD/das