

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

James Lawrence Electric Inc

DECISION OF THE HEARING OFFICER

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

Employer: James Lawrence Electric Inc, 160 Emerald St Unit 10, Keene, NH 03431

Date of Hearing: May 2, 2107

Case No.: 54903

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,800.00 in unpaid vacation pay which was due upon his termination from employment. He argues the employer made up the reason for his termination because he reported what he believed to be a violation of the payment of travel time and because the employer did not want to pay out his vacation pay.

The employer denies the claimant is due any vacation pay upon separation because he was terminated for cause, which under the written policy forfeits vacation pay.

FINDINGS OF FACT

The claimant worked for the employer from June 8, 2013 through January 20, 2017, when the employer terminated his employment.

The claimant argues he had 80 hours of vacation pay at \$25 per hour when the employer terminated him. He believes the employer made up the reason for his termination because he reported what he believed to be a violation of the payment of travel time and because the employer did not want to pay out his vacation pay. Further, he did not falsify time records, as the employer has accused him of doing. He also argues that a hearing held at the New Hampshire Employment Security agency found he wasn't engaged in any wrongdoing.

The employer argues he terminated the claimant for falsifying time records. The apprentice working with the claimant told the employer they had not been working all the time they had said they were. Because he terminated the claimant for cause, for falsifying time records, no vacation pay is due under the written policy.

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 claimant was aware of the written policy, however, he disagrees that he falsified time records and therefore the termination for cause is not valid.

The written policy states, in relevant part, "If you are terminated for cause, you forfeit any unused vacation time." The handbook also has an Ethics section which reads, in relevant part, "Making fraudulent statements or intentional omissions on any company records is prohibited. Examples of company records include, but are not limited to, applications for employment, time books, and other human resources records; employee reimbursement forms, invoices, or other accounting records."

The claimant's argument that the New Hampshire Employment Security agency found he was not responsible for any wrongdoing is not persuasive in this hearing pursuant to the following statute. RSA 282-A:180 states, "Decisions rendered under this chapter shall not be admissible in any court or in administrative or other proceedings, not under or pursuant to this chapter, for the purpose of barring such court or proceeding from making independent findings of fact and rulings of law under the doctrine of collateral estoppel".

The employer properly noticed the claimant that a termination for cause would forfeit any vacation time accrued. This Department does not have jurisdiction over the determination as to whether or not the alleged act occurred, only that the employer properly executed their written policy.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due any vacation pay under the written policy of the employer.

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 the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 17, 2017

Original: Claimant
cc: Employer

MJD/das