

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Stratera Services LLC fka Harvard Property Trust LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid PTO and employee expenses
RSA 275:43-b unpaid salary

Employer: Stratera Services LLC fka Harvard Property Trust LLC, 14675 Dallas Pkwy
Ste 600, Dallas, TX 75254

Date of Hearing: May 8, 2107

Case No.: 54945

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$2,163.46 for forty-five hours of unpaid PTO pay at \$48.08 per hour; \$27.93 in unpaid employee expenses for a gift for a client; and \$5,529.20 for one hundred fifteen hours of salary at \$48.08 per hour.

At the hearing, the claimant agreed he received payment for the employee expenses of \$27.93 and removed the issue from the hearing.

The employer denies the claimant is due any unpaid salary or PTO pay. He received salary for all of the pay periods in which he performed any work and all accrued PTO pay.

FINDINGS OF FACT

The claimant worked for the employer from June 2, 2014 through December 15, 2016, his last day due to a layoff. He continued to receive monies equal to his regular salary through January 15, 2017, using available PTO to equal his regular salaried amount.

The claimant argues he is due unpaid salary because other employees involved in the layoff received greater amount of pay outs of salary because they had lower PTO balances.

The employer argues the claimant performed no work after December 15, 2016, and therefore no salary is required under RSA 275:43-b.

The claimant first acknowledged he did not perform any work after December 15, 2016. Then upon cross examination, he stated he performed "wind down" activities. He could not articulate what those activities entailed. He agreed his access to the employer's computer system and emails shut down on December 15, 2016.

RSA 275:43-b states that a salaried employee shall receive their full salary for any pay period in which such employee performs any work (emphasis added) without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary during any pay period in which such employee performs no work.

RSA 275:42 III defines the term "wages" as compensation, including hourly health and welfare, and pension fund contributions required pursuant to a health and welfare trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of an employee and agreed to by his employer, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

The claimant did not perform any labor or render any services. As such, any payment would not fall under the definition of wages.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due any salary.

The claimant argues he is due unpaid PTO because his final pay check showed a balance of forty-five hours.

The employer provided credible testimony the claimant received the forty-five hours of PTO on his final pay check, in addition to eight hours of holiday pay and twenty-seven hours of payment to equal his regular salaried amount. The employer changed payroll systems during January 2017, and the new payroll system erroneously showed the forty-five hours final pay check that were paid in the final pay check.

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

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-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is invalid.

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.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 23, 2017

Original: Claimant
cc: Employer
Employer's Attorney

MJD/das