

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Croteau Gilbert Ventures LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay and severance
RSA 275:43-b unpaid salary

Employer: Croteau Gilbert Ventures LLC, 4 Wadsworth Dr, Brookline, NH 03033

Date of Hearing: May 4, 2107

Case No.: 54956

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$1,173 in unpaid salary as the employer terminated her employment after the first week of a biweekly pay period and did not pay her for the second week, February 13 through 19, 2017. She also argues she is due one week of vacation pay.

At the hearing, she clarified she was not seeking any unpaid severance pay.

The employer agreed they paid the claimant for only the first week of the two week biweekly pay period in which she was terminated. They were not aware of any New Hampshire law to the contrary.

They argue the claimant had been paid for more vacation time than she had accrued.

FINDINGS OF FACT

The claimant worked for the employer from March 28, 2016 through February 19, 2017, when the employer terminated her employment. Her biweekly salaried pay was \$2,346.

The claimant worked the first week of the biweekly pay period, February 13 through February 19, 2017, when she was terminated. The employer paid the claimant for only the first week of the biweekly pay period. The claimant seeks the second week as due.

The employer argues, for the first time at the hearing, that the claimant was terminated because she "grossly mismanaged" the store. No documentation was presented to show any prior issues with work performance.

RSA 275:43-b II permits an employer to prorate salary to a daily basis when a salaried employee "is terminated for cause by the employer".

The current standard for a "for cause" termination is established by Lakeshore Estates Associates LLC v Michael F. Walsh (Belknap Superior Court No. 06-E-259, April 4, 2007). The Decision sets the standard as, "articulated at 82 Am. Jur. 2D *Wrongful Discharge* § 183 (2003), which provides that an employer may dismiss an employee "for cause" if the employee engages in misconduct. An employee's misconduct must comprise reasonable grounds for termination, and the employee must have received notice, express or fairly implied, that such misconduct would be grounds for termination. 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003); see also *Lowell v U.S. Sav Bank*, 132 N.H. 719, 726 (1990) (an employer must offer an employee a proper reason for a "for cause" dismissal). In reviewing a "for cause" dismissal, "the fact finder must focus not on whether the employee actually committed misconduct, but rather on whether the employer reasonably determined it had cause to terminate." 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003)".

The Hearing Officer finds that the employer did not have grounds to reasonably determine that it had cause to terminate the claimant because she had not been warned of impending termination. The Hearing Officer, therefore, finds that the employer did not terminate the claimant "for cause" and that the claimant proves by a preponderance of the evidence that she is owed the week of salary for February 20 through February 26, 2017, or \$1,173.

The claimant also argues she is due a week of vacation pay. She argues the employer paid her two additional weeks of pay upon separation and told her she could consider it a week of vacation and a week of severance or two weeks of vacation pay, and she "would LOVE to consider one week vacation and the other severance..."

The employer argues the claimant has been paid more days than she had accrued. Additionally, they paid the claimant two additional weeks of pay upon separation and told her she could consider it a week of vacation and a week of severance or two weeks of vacation pay.

The employer credibly testified the claimant had taken four vacation days in July 2016. She had only accrued eight days of vacation pay at a rate of .8333 days per month (.8333 * 10 months), pursuant to her offer letter, previously submitted. She used four days, received pay for ten, therefore she has been overpaid.

The claimant had accrued 8.333 days of vacation pay. She used four days of vacation in July 2016, leaving a balance of 4.333 days. Even if she used only one of the two weeks of pay received at the end of her employment as vacation pay, she received another five days of vacation pay, which overpaid her vacation pay by .667 days.

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

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 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 proved by a preponderance of the evidence that she was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,173.

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 she is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,173, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 24, 2017

Original: Claimant
cc: Employer

MJD/das