

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**Dead River Co**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay, holiday pay, bereavement pay  
and sick pay

**Employer:** Dead River Co, 80 Exchange St, Ste 300, Bangor, ME 04401

**Date of Hearing:** May 10, 2107

**Case No.:** 54972

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed the following unpaid benefit leave pay:

- \$1,752.79 for 97 hours of vacation pay at \$18.07 per hour
- \$1,445.60 for 80 hours of holiday pay at \$18.07 per hour
- \$433.68 for 24 hours of bereavement pay at \$18.07 per hour
- \$722.80 for 40 hours of sick pay at \$18.07 per hour

He argues the employer provided him with a document that showed he had these benefits for 2017. He separated from the company on March 10, 2017, and seeks these payments as due.

The employer denies the claimant is due any further wages pursuant to their written policies regarding vacation pay, holiday pay, bereavement pay and sick pay.

**FINDINGS OF FACT**

The claimant worked for the employer from January 8, 2007 until his resignation on March 10, 2017. He was an hourly employee earning \$18.07 as a truck driver for the relevant period of this claim.

The claimant notes that all of the benefit time from the employer, vacation pay, holiday pay, bereavement pay and sick pay, are refreshed on January 1 of each year. The employer presented a Total Compensation Report to him around January 1, 2017 for the year 2017. The report outlined base pay, company paid insurance benefits, employee paid insurance benefits, 401 (k) benefits and deductions, tax deductions and employer tax contributions, and time off benefits.

The claimant argues that the Time Off Benefits section lists available hours and the associated value of those hours as follows:

- \$2,168.50 for 120 hours of vacation pay at \$18.07 per hour
- \$1,445.60 for 80 hours of holiday pay at \$18.07 per hour
- \$433.70 for 24 hours of bereavement pay at \$18.07 per hour
- \$722.80 for 40 hours of sick pay at \$18.07 per hour

He resigned his position with the employer on March 10, 2017. He agrees he received the appropriate wages for time worked. He only received payment for 23 hours of vacation pay. He seeks the balance of 97 hours of vacation pay, 80 hours of holiday pay, 24 hours of bereavement leave and 40 hours of sick pay as due, upon his separation from the employer, because the available hours were listed on the Total Compensation Report for 2017.

The employer argues the claimant is not entitled to any additional payment of benefit leave pay under their written policies.

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, sick leave, and other fringe benefits. 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 their written policies regarding vacation pay, holiday pay, bereavement pay and sick pay.

The written policy regarding vacation pay originally provided to the claimant had a revision date of 10/00. The employer had a signed notification from the claimant for that policy. The employer also submitted an updated version of the policy, dated 08/14. Though they did not have a signed notification for the 8/14 policy change, they provided credible testimony that they post these policies as a matter of practice. These policies are substantially similar.

Both vacation policies advised the claimant that, "All nonexempt, regular, full-time employees are entitled to the following vacation time. Time Allowance with Pay. For the calendar year: [the claimant's longevity falls in the 120 hours category]."

Both vacation policies notice the claimant that at separation, an employee with available vacation pay will receive a vacation payout for the year, as they are entitled to on the day of separation. The newer policy goes on to clarify that separating employees will "receive prorated vacation based on the length of time actually worked that year."

Both vacation policies acknowledge that the vacation time is not earned and banked for 100% of the available time on January 1, rather than this time is for the calendar year. The policy could have been written more clearly to identify with specificity

how vacation time is accrued. The policies notify the claimant he will only receive the vacation pay he is entitled to as of the date of his separation.

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

The claimant argues he is due payment for the available holiday pay hours.

The written policy notifies the claimant that “an employee who separates from the company shall receive payment for the unused holiday hours that they are entitled to as of the day of separation.” The employer provided a list of observed holidays for 2017. As of the date of the claimant’s separation, none of the observed holidays had occurred.

There is neither a statutory obligation nor any obligation created by the written policy for the employer to pay the claimant for holidays which had not occurred during his employment.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed holiday pay under the written policy of the employer.

The claimant argues he is due payment for the available bereavement pay hours.

The written policy regarding bereavement pay reads, in relevant part, “Regular full-time employees may receive bereavement leave with pay for up to three (3) days when necessary to attend to family matters upon the death of a close relative [close relative defined in policy]”

The policy notifies the claimant that bereavement pay is for a specific use only, and not an accruable benefit.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed bereavement pay under the written policy of the employer.

The claimant argues he is due payment for the available sick pay hours.

The written policy regarding sick pay reads, in relevant part, “Dead River will not pay out unused sick pay upon separation of employment or at any other time.”

The policy clearly notifies the claimant sick pay is not payable at separation.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed sick pay under the written policy of the employer.

The claimant’s argument that these benefits shown as available hours on his 2017 Total Compensation Report are due and payable is not found persuasive as the written policies provide the detail for how these benefits are handled. The term ‘available hours’ does not create a contract or notify the claimant that these benefits are earned and vested to his benefit at the beginning of the year.

## **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 275:43 V considers holiday 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 holiday pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers bereavement 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 bereavement pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers sick 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 sick pay, it is hereby ruled that this portion of the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: May 31, 2017

Original: Claimant  
cc: Employer

MJD/das