

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

Century Ambulance, LLC

DECISION OF THE HEARING OFFICER

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

Employer: Century Ambulance, LLC, P.O Box 999, Concord, NH 03302

Date of Hearing: July 10, 2017

Case No.: 55232

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$384.00 in wages for offered, but unpaid, vacation hours.

The employer holds the company does not offer a vacation benefit, and therefore does not owe these wages.

FINDINGS OF FACT

The claimant was hired in October, 2012; the claimant terminated his employment on April 23, 2017.

On April 15, 2017 the claimant experienced a medical event that required him to be away from work for a period of time. On April 19, 2017, the claimant credibly testified that Beverly Hurd, who he described as the owner of the business, offered the claimant vacation pay to cover the time missed; the claimant affirmed he would accept the offer.

On April 21, 2017 the claimant returned to work and on April 23, 2017 the claimant terminated his employment with the employer.

Erin Maloney, identifying herself as the employer, testified that Beverly Hurd is a dispatcher for the company and not authorized to grant paid vacation.

On April 28, 2017, the claimant met with Ms. Maloney to receive his final wages; noticing the check to be short the hours promised, the claimant asked Ms. Maloney why the vacation pay was not included and she responded by saying it was because he failed to give notice he was leaving the company. Ms. Maloney did not challenge the claimant's testimony.

Both parties agree there was no written policy regarding vacation time and the claimant testified he understood there to be no benefits when he first started with the company.

RSA 275:43 V states that vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment ***practice*** [emphasis added] or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

The claimant credibly testified he was offered vacation time to cover time away from work due to a medical event. Similar instances of unpaid time being offered to the claimant or other employees were not offered in this case.

Despite there being different reports for why the vacation time was not paid, the claimant did not provide an example or examples of other similar events that would constitute a ***practice*** [emphasis added] as required by statute.

Therefore, the Hearing Officer finds the claimant failed to meet his burden, proving beyond a preponderance of the evidence he is due the claimed vacation time.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and RSA 275:43 V requires that when vacation pay is a matter of employment practice or policy, or both, shall be considered wages, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

Date of Decision: August 9, 2017

Original: Claimant
cc: Employer

DMZ/das