

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Frisbie Memorial Hospital

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:44 IV liquidated damages

Employer: Frisbie Memorial Hospital, 11 Whitehall Rd, Rochester, NH 03867

Date of Hearing: September 5, 2017

Case No.: 55260

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$504 in unpaid wages and \$1,470 in unpaid vacation pay. She further seeks liquidated damages.

The employer paid the claimant \$504 for a shift she did not work and 30.15 of vacation pay of \$1,266.30. The claimant seeks the balance of 4.85 hours of vacation pay and liquidated damages of \$7,880.

The employer denies the claimant is due any wages. The paid her for a shift she did not work and for vacation pay she was not due as she was a probationary employee who does not receive vacation pay upon separation pursuant to the written policy. However, because of the circumstances, they chose to pay these items for goodwill purposes.

FINDINGS OF FACT

The claimant was terminated by the employer during her probationary period.

She agrees she received payment for wages of \$504. She did not work this shift.

She agrees she received payment for 30.15 hours of vacation pay, but argues she is due the balance of 4.85 hours, or \$203. She argues she saw an accrual of 35 hours online, but was not able to print it and no longer has access to the online system.

The employer provided credible testimony that the claimant only had 30.15 hours of vacation accrued. Further, pursuant to the written policy the claimant was not due any vacation pay as she was terminated within her probationary period.

The Hearing Officer finds the claimant failed to prove she had 35 hours of vacation pay accrued. Further, as a probationary employee, she was not due a payment of any vacation pay at separation. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed vacation pay.

As no vacation pay is found to be due, no liquidated damages can be assessed.

However, even if vacation pay has been found to be due, no award of liquidated damages would have been given.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds the employer's argument that they held a genuine belief that no vacation pay is due under the written policy and the accounting of her vacation pay. Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay her all wages due in the time required because the employer had a genuine belief that the vacation pay was not owed.

The claimant seeks liquidated damages on the \$504 wages which she argues were paid late.

The claimant did not work the hours to earn the \$504. Therefore, the employer had no obligation to pay the wages. They chose to do so as a measure of goodwill.

Because no wages were due to the claimant, liquidated damages cannot be awarded.

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 this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: September 8, 2017

Original: Claimant
cc: Employer

MJD/nm