

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

Sea-Hare, Inc.

DECISION OF THE HEARING OFFICER

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

Employer: Sea-Hare, Inc., 26 Bartley Hill Road, Londonderry, NH 03053

Date of Hearing: August 2, 2017

Case No.: 55316

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is due unused accrued vacation time on the basis he had earned it and should be compensated for it.

He claims, as due, unused vacation time valued at \$1,467.00.

The employer contends that the claimant is not due this time consistent with company policy.

FINDINGS OF FACT

The claimant worked for the employer from June 2012 through May 31, 2017.

The claimant credibly testified he had accrued nine (9) days of unused vacation time.

The employer previously submitted a company policy that states, in part, "Upon termination, eligible employees will not be paid for accrued but unused vacation, unless state law dictates otherwise." A signed and dated acknowledgment from the claimant accompanied this policy.

The claimant acknowledges he is familiar with the employer's policy and that he signed the vacation policy acknowledgement.

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 or policy, or both, shall be considered wages pursuant to RSA 275:42, III, **when due** [emphasis added].

Earned vacation only becomes wages “when due.” “When due” is a reference to contingencies specified in employers’ policies.

RSA 275:49 requires an employer to maintain a written policy for vacation time, however, the terms and conditions of the policy are at the discretion of the employer. The employer properly notified the claimant that vacation time was forfeited upon separation from the employer.

Therefore, the Hearing Officer finds the claimant failed to prove 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 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 vacation pay, it is hereby ruled that the Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

Date of Decision: August 3, 2017

Original: Claimant
cc: Employer

DMZ/das