

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v

D & S West Lebanon, LLC
d/b/a Moe's SW Grill

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I, unpaid wages
RSA 275:43-b, unpaid salary
RSA 275:43 V, unpaid vacation
RSA 275:43 V, unpaid personal days

Employer: D & S West Lebanon, LLC dba Moe's SW Grill
250 Plainfield Road, West Lebanon, NH 03766

Date of Hearing: September 26, 2017

Case No.: 55560

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed wages for unpaid salary, unpaid vacation and unpaid personal days.

The claimant originally asserted through the filing of a wage claim that she is owed \$640.00 in unpaid vacation, \$60.00 in unpaid personal time and \$160.00 in unpaid salary. At the hearing the claimant amended her claim concerning vacation to \$1,440.00.

The employer holds the claimant has been paid in-excess the amount due her.

FINDINGS OF FACT

The claimant worked for the employer from April, 2012 until the day she quit, June 26, 2017. The claimant was employed as a restaurant general manager earning a salary of \$800.00 per week and paid biweekly.

The claimant argues she is due \$160.00 for one (1) day of salaried wages for her last day of work on June 26, 2017 which is the first day of a new pay period.

The employer demonstrated they paid the client for this day. The check was issued on July 7, 2017 and cashed on July 13, 2017.

The Hearing Officer finds the employer paid the employee consistent with statute (RSA 275:43-b) that requires salaried employees who quit be paid their prorated salary for the days actually worked. Therefore the Hearing Officer finds that the claimant failed to prove by a preponderance she is due the claimed \$160.00 for June 26, 2017.

The claimant holds she is due the balance of her annual eighty (80) hours or \$1,600.00 of vacation, less eight (8) hours or \$72.00 equal to \$1,440.00. In addition, the claimant argues she is due three (3) hours of personal time or \$60.00. She states "it should have been three days, but I'm happy with three hours." The claimant argues she never used any vacation time.

The claimant holds she took herself off the schedule on occasion for staffing reasons or to be available for other job related duties. She holds the submitted schedules do not reflect the days she actually worked. The claimant did not provide any supporting documentation nor did she specify the dates she worked that were in variance to the schedule time she submitted that indicated she was not at work.

The employer credibly testified that the claimant was absent from work for sixteen (16) days; he used payroll records and the claimant's submitted payroll schedules to support his position.

The sixteen (16) days were in excess of the thirteen (13) the claimant had available to her. The employer paid the claimant her usual wages for the sixteen (16) absent days inclusive of three (3) hours of personal time the claimant argues is due her.

The Hearing Officer does not find the claimant's argument persuasive she worked the days the schedule indicated she didn't.

The claimant has the burden of proof to show by a preponderance of the evidence that she is due the vacation time she claims. The Hearing Officer finds that the claimant failed to meet that burden. The claimant therefore fails to prove by a preponderance she is due the vacation / personal 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-b II requires salaried employees who quit be paid their prorated salary for the days actually worked and as this Department finds that the claimant failed to prove by a preponderance of the evidence she is owed additional wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers vacation pay and personal time 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 additional vacation and personal pay, it is hereby ruled that this portion of the Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

Date of Decision: October 26, 2017

Original: Claimant
cc: D & S West Lebanon, LLC dba Moe's SW Grill
250 Plainfield Road, West Lebanon, NH 03766
Attention: Karl Vucich

DMZ/nm