

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

A J LeBlanc Heating, Air Conditioning & Plumbing

DECISION OF THE HEARING OFFICER

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

Employer: A J LeBlanc Heating Air Conditioning & Plumbing
45 South River Road, Bedford, NH 03110

Date of Hearing: September 19, 2017

Case No.: 55725

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue relates to the amount of unused vacation benefit the claimant is entitled to following his resignation.

The claimant originally asserted, through the filing of his wage claim, that he was owed \$680.00 in unpaid vacation time.

At the hearing the claimant amended his claim to \$806.00 in unpaid vacation time.

The employer holds that the claimant has been paid, in-full consistent with the employer's policy and is due no further wages.

FINDINGS OF FACT

The claimant worked as a lead HVAC installer for the employer from November 8, 2016 thru July 27, 2017. His rate of pay was \$30.00 per hour.

The claimant argues he is due wages in the amount of \$806.00 for the balance of unused vacation time. The employer disagrees, holding all wages due have been paid to the claimant.

RSA 275:49 V requires the employer to make available to employees, in writing, or through a posted notice, employment practices and policies with regard to vacation pay.

Upon hire, the employer notified the claimant as to the company's vacation policy. The policy dated November 3, 2016 and submitted earlier, provides regular full-

time staff five (5) days after one year of employment. Upon termination for any reason employees receive a prorated portion of their unused vacation time.

In addition, the employer previously submitted an offer letter dated and signed by the claimant on November 3, 2016

. The offer letter provided the claimant an additional week of vacation for a total of two (2) weeks and the opportunity to use this time after a ninety (90) day probationary period rather than the customary one (1) year.

The claimant acknowledges signing these documents; but asserts he did not read them and he “should have read them.”

The Hearing Officer finds the employer properly notified the claimant consistent with RSA 275:49 V.

The claimant previously submitted pay stubs for two pay checks. The pay stub for employer’s payroll check number 91174 dated August 3, 2017 includes a line item for available vacation; it reflects forty (40) hours. The second statement also dated August 3, 2017, and numbered 91184, reflects 13.12 hours of vacation. The claimant points to the employer’s accounting on the paystub for check number 91174 reflecting a balance of forty (40) hours as support he is due forty (40) hours of vacation pay.

The Hearing Officer finds that just because the employer did not maintain an accurate accounting of vacation time on the paystub, its insufficient evidence proving he is due a balance of forty (40) hours of vacation time. As 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 time only becomes wages “when due.” “When due” is a reference to contingencies specified in employers’ policies.

The employer determined the vacation balance due the claimant using a process consistent with their policy. The policy reads in-part: “Upon termination of employment for any reason, employees will be paid a portion of unused vacation time, which when added to any vacation time taken in the calendar year, equals the employee’s annual vacation allocation prorated on the basis of the portion of the anniversary worked. For employees who have completed one (1) and (5) years of service, the rate of accumulation shall be .41 days per month work accrued at the end of the month.” Accrual rates then change as a function of longevity.

The employer’s written policy grants vacation eligibility of one (1) week of vacation after one (1) year of employment. The claimant negotiated two (2) weeks of vacation after ninety (90) days of employment. The policy does not specify what happens to the vacation time of the employee with less than a year of longevity. The employer used the value associated with (1) one year or more of longevity, an accrual rate of .41.

The employer explains in their termination letter to the claimant: “Having worked 8 of the 12 months in a year to have accrued 6.64 days of paid vacation. Given this

accounting 5 paid days must be subtracted from that total since you have already taken and been paid those. This means, you will be paid for the 1.64 days (1.64 days @ 8 hours/day = 13.12 hours) or 13.12 hours of paid unused prorated vacation time.

The claimant negotiated more vacation, and the ability to use it sooner than set forth in the employer's policy. The Hearing Officer finds that the claimant did not negotiate different separation terms and that the employer properly applied the terms of their written policy to the payment of vacation at separation.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is owed additional vacation pay under the written policy of the employer.

DISCUSSION

A reading of the employer's benefit policy leaves the reader with the reasonable conclusion that she did not foresee granting *any* vacation time to separated employees with less than a year of longevity. If such a conclusion is valid, the employer exceeded their statutory duty by paying the claimant \$393.00 for 13.13 hours of vacation time. A clearer expression of the employer's intention in these circumstances may be warranted.

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 additional vacation pay, it is hereby ruled that this Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

Date of Decision: October 19, 2017

Original: Claimant
cc: Employer

DMZ/nm