

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Marco Petroleum Ind Inc

DECISION OF THE HEARING OFFICER

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

Employer: Marco Petroleum Ind Inc, 38B South Rd, N Hampton NH 03862

Date of Hearing: October 4, 2017

Case No.: 55819

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$630 in unpaid vacation pay for July 18, 19, and 20, 2017. He is a part time employee who worked an average of 33 hours per week while he was considered part time, and therefore, should be eligible for vacation time pursuant to the handbook.

The employer denies the claimant is due any vacation pay as he is a part time employee only regularly scheduled to work less than 32 hours per week, which makes him ineligible for vacation pay pursuant to the written policy.

FINDINGS OF FACT

The claimant worked for the employer from 2013 through August 3, 2017, when he separated through a mutual agreement with the employer. He worked full time until April 1, 2017, when he changed to part time, scheduled to work three days for 10 hours each day.

The claimant argues he should have received vacation pay as a part time employee because he worked an average of 33 hours per week.

The employer argues the written policy states, "Part-time employees are regularly scheduled to work less than 32 hours per week. They are not eligible for any of Marco Petroleum Ind Inc's benefit programs."

They agree they did pay the claimant one day of vacation earlier in the year, as they had failed to reduce his change from full time to part time status to writing, and did not want to be noncompliant. They paid this one day, and did notice the claimant in writing as to his change in status, of which he had been verbally and practically aware.

The claimant was scheduled to work 30 hours per week. He did occasionally work greater than that if the need arose, however, he was not regularly scheduled to work more than 32 hours per week.

The claimant's argument that he was not familiar with the handbook is not found persuasive or credible as he testified to many items in the handbook and used it as an example. Further, the employer provided credible testimony that the claimant helped to update the handbook.

Therefore, the Hearing Officer finds the claimant failed to prove he is due the claimed vacation pay under the written policy of the employer.

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 any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 16, 2017

Original: Claimant
cc: Employer

MJD/nm