

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

Jay-Mor Enterprises

DECISION OF THE HEARING OFFICER

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

Employer: Jay-Mor Enterprises Inc., 10 West Road, P. O. Box 785
Hudson, NH 03051

Date of Hearing: November 14, 2017

Case No.: 56130

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the matter of alleged unpaid wages and unpaid vacation pay.

The claimant worked for the company, a demolition company, as a truck driver with a CDL license.

The claimant alleges the employer made automatic deductions from his time worked for lunches he never took. He holds further he is owed vacation time.

The employer holds the claimant has been paid all wages due.

On the basis of the claimant's assertion he is owed unpaid wages and vacation, holiday and sick pay he filed a Wage Claim with this Department on September 28, 2017; a Notice of Wage Claim was forwarded to the employer on this same date. The employer filed an objection to the claim on October 5, 2017. The claimant requested a hearing on October 12 2017; subsequently Notices of Hearing were sent to the parties on October 25, 2017 and accordingly a hearing was held on November 14, 2017.

FINDINGS OF FACT

The claimant was employed by the company for just over six (6) months from March 14, 2017 through September 18, 2017 at which time he left the company on his own accord.

The company uses a daily employee-specific log sheet that includes, amongst other required information, the time the employee began work, the time they ended and a space to indicate if they did not take a lunch break.

The employer testified it is their practice to direct employees to use the daily log sheets to note when they did not take a lunch break. The employer further testified that a lunch break is considered to be thirty (30) minutes in duration.

The claimant previously provided copies of seven (7) daily log sheets where the notation "no lunch" has been recorded.

The employer previously provided a spread sheet acknowledging the same seven (7) dates the claimant noted above when he did not take a lunch. The employer noted an additional six (6) dates on the spreadsheet the claimant did not take a lunch. The employer's payroll records show the claimant being paid in-full for these periods

The company has no written policy regarding paid vacation, paid sick and paid holidays.

DISCUSSION

New Hampshire Labor Law requires employers keep a true and accurate record of the hours worked by employees and record payroll information so that time records, showing the time work began and ended including any bona fide meal periods support individual pay sheets and that payroll sheets, in turn, support canceled checks or cash receipts.

The employer acknowledges it is their customary practice whereby lunch periods, valued at thirty (30) minutes, are automatically deducted from employee's time records *if* the employee does not *explicitly* note on their daily log that they did not take a lunch period.

This practice is in violation of RSA 279:27 and Lab 803.03 (f) (1). However, the exhibits the claimant provided indicating the dates he did not take a lunch were also acknowledged, and the time paid for, by the employer. The claimant failed to present quantified evidence that show he was not paid in-full for all time worked.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275:49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification. This statute allows an employer to determine their policy concerning vacation, sick and holiday pay including *if* any payment is due at the employee upon separation.

RSA 275:43 V states that vacation pay, holiday pay, and sick pay, 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].

The claimant argues vacation, holiday and sick pay was part of his compensation package and therefore he is owed for the time and due the equivalent in wages.

The employer holds it is not their practice to provide employees with benefit time when they have less than one (1) year of employment, but they concede they have no written policy concerning benefits as required by the above statute.

The Hearing Officer finds that the employer was not in compliance with the requirements of RSA 275:49 when they failed to inform the claimant, in writing, of their practices and policies regarding vacation pay, holiday and sick pay.

However, the Hearing Officer also finds that this does not automatically guarantee the claimant the claimed wages. The claimant did not provide convincing evidence or testimony that the employer promised him, or did he provide evidence other employees in a similar situation receive the vacation, holiday and sick time under the conditions he claims.

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds that the claimant failed to meet this burden. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed the claimed wages

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 he was not paid wages for all the time he worked, it is hereby ruled that this portion of the Wage Claim is invalid.

Based on the testimony and evidence presented, and as RSA 275:43 V considers vacation 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 by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

David M. Zygmunt,
Hearing Officer

Date of Decision: December 14, 2017

Original: Claimant

DMZ/nm