

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

DHL Supply Chain

DECISION OF THE HEARING OFFICER

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

Employer: DHL Supply Chain, 1403 Route 3A, Bow, NH 03304

Date of Hearing: January 23, 2018

Case No.: 56411

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns a dispute between the parties as to the status of unpaid vacation time at separation.

The claimant worked for the employer, an international distribution provider, filling orders for shipment.

The claimant submits he separated from the employer on his own initiative, the employer holds he was dismissed.

The claimant holds he is owed for unpaid vacation time.

The employer contends that the claimant is not owed vacation time consistent with company policy.

On the basis of the claimant's assertion he is owed unpaid wages in the form of unpaid vacation time, the claimant filed a Wage Claim with this Department on November 27, 2017. A Notice of Wage Claim was sent to the employer on November 28, 2017. On December 15, 2018 this Department received the employer's Objection to the Claim; on this day the Objection was forwarded to the claimant. The claimant requested a Hearing on December 27, 2018. A Notice of Hearing was sent to the parties on January 4, 2018 and accordingly a hearing was held on January 23, 2018.

FINDINGS OF FACT

The claimant worked for the employer from November 2016 until the beginning of October 2018.

Prior to separation the claimant was earning \$13.75 per hour and paid weekly.

The claimant began working full time for the employer on April 11, 2017; his last day of work was October 13, 2017. The claimant's full-time status equaled six (6) months and three (3) days.

The employer maintains an employee policy handbook; the last revision was in May 2017.

The claimant signed an acknowledgement of the company policy handbook.

DISCUSSION

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed any 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.

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].

Vacation pay time only becomes wages "when due." "When due" is a reference to the contingencies specified in employers' policies.

The claimant refers to his last wage statement that shows a balance of thirty-three and three-tenths (33.3) hours of accumulated vacation time. He asserts this to be evidence he is owed the time. The claimant calculates its worth to be \$457.88 or 33.3 hours x \$13.75.

The employer credibly testified that there have been issues with employee's time off balances appearing incorrectly on statements of deductions since the recent conversion of a portion of their computer based payroll system.

The employer's position is that the claimant is not due the accumulated time because he had not reached the point of six (6) months of full time employment required per company policy.

According to this employer's policy, employees who have worked full time for six (6) months begin to be eligible to earn vacation time, the last calendar day of each month, at a rate of 6.67 hours per month and states in-part:

"9.1 Associates leaving the organization prior to completing six months of employment are not eligible for vacation time" and "9.2 Associates leaving the organization after completing six months of employment are eligible to receive payment for any vacation accrued but not taken."

The Hearing Officer finds that the employer did not maintain an accurate accounting of vacation time on the paystub. However, this is insufficient evidence to

prove the claimant is due a balance of thirty three and three tenths (33.3) hours of vacation time.

The employer submitted their company policy with the claimant's signed acknowledgement.

The employer properly notified the claimant of the policy regarding vacation pay, as required by RSA 275:49. Nothing in the statute requires an employer to pay vacation pay to a separated employee. The statute does require the employer to notify employees in writing as to how the program works, including how they receive the benefit and how the benefit is treated upon separation.

The claimant's fulltime status - a time when he was eligible to accrue vacation time - exceeded the six (6) month threshold by three (3) days. The employer's policy reads in-part: "After six months of employment, vacation begins to accrue at a rate of 6.67 hours **effective the last day of each month** per calendar year (emphasis added by this writer)." Thus, due to the timing of the claimant's departure (on the 17th of the month of his six-month full time anniversary), the claimant is ineligible to receive the three (3) days of his accrued time according to the employer's policy.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is owed additional wages in the amount of \$457.88.

DECISION AND ORDER

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:43 V considers the payment of vacation 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 evidence that he is due additional wages it is hereby ruled this Wage Claim is invalid.

Date of Decision: February 16, 2018

Original: Claimant
cc: DHL Supply Chain, 1403 Route 3A, Bow, NH 03304
Kristin Ortiz, Human Resource Manager