

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Winnisquam Marine Inc

DECISION OF THE HEARING OFFICER

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

Employer: Winnisquam Marine Inc, 12 Sunset Dr, Belmont NH 03220

Date of Hearing: March 1, 2018

Case No.: 56552

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,140 in unpaid vacation pay due upon his separation.

The employer denies the claimant is due any vacation pay as his employment terminated prior to the paid annual company shutdown.

FINDINGS OF FACT

The claimant worked for the employer from April 14, 2015 through December 11, 2017, when the employer terminated his employment.

The claimant argues he answered an advertisement for employment that referenced four weeks of paid vacation pay. At the time of his termination, he had used one week of vacation pay, the employer paid two weeks of pay which he considers vacation pay, and he now seeks the balance of one week of vacation pay as due. He further argues that the advertisement he responded to should be the controlling document as to his benefits, not the employee handbook which he received and signed for.

The employer argues that the written policy, for which the claimant signed an acknowledgement, provides for one week of vacation pay and for payment of the annual company shutdown, which is generally three weeks, between December and January. The claimant was terminated on December 11, 2017, prior to the winter break and pursuant to the written policy, is not due any payment for the winter break period as he was not a current employee.

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 sick pay and 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.

The employer properly noticed the claimant as to the policy regarding vacation pay and paid winter break policy, for which the claimant signed an acknowledgement on January 9, 2017.

6.1 Personal, Sick or Vacation Day Benefits

The company provides, as a benefit, 5 paid day for its eligible employees. Full time employees who have worked for a full year will receive up to 5 paid days to act as personal, sick or vacation days....

The claimant acknowledges he received a payment representing five days, or one week, of vacation pay.

6.3 Winter Break Benefits

Winnisquam Marine typically closes for a 3 week period during the winter. This break may be shortened in time pending economic conditions. Full time employees who have worked for a full year will receive pay for these 3 weeks at their base pay level (i.e. 40 hours or base salary) as an employee benefit. The employee MUST be a current employee in good standing to receive the benefit. Employee contracts may affect this benefit.

The claimant's argument that the advertisement to which he responded showed four weeks of vacation pay and should be held as the controlling document over the employee hand book, is not persuasive. The employer properly noticed the claimant of the paid winter break benefit in the employee handbook, which is the controlling document.

Even if the advertisement could potentially be construed as a notification of paid benefits, the employer is free to change those benefits prospectively.

The employer expressly and correctly notified the claimant that he must be a current employee in good standing at the time of the winter break in order to be eligible for payment. As the employer terminated the claimant's employment December 11, 2017, prior to the winter break period, he is not due any payment under the written policy of the employer.

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.

Date of Decision: March 12, 2018

Original: Claimant
cc: Employer