

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**v.**

**Thayer Public Library**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I, unpaid wages  
RSA 275:48 I V, illegal deductions

**Employer:** Thayer Public Library, P.O. Box 67, Ashuelot, NH 03441

**Date of Hearing:** February 7, 2018

**Case No.:** 56602

**BACKGROUND AND STATEMENT OF THE ISSUES**

The current issue concerns a dispute between the parties regarding alleged unpaid wages and inaccurate deductions from wages.

The claimant holds that she is owed for an incorrect federal income tax withholding; for the balance of the hours scheduled that she did not work in her final month with the employer and for unpaid compensatory time.

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

On the basis of the claimant's assertion she is owed unpaid wages and inaccurate deductions made from her pay, the claimant filed a Wage Claim with this Department on December 29, 2017; a Notice of Wage Claim was forwarded to the employer this same day. The employer did not respond to the Notice of Wage Claim thus a Notice of Hearing was sent to the parties on January 18, 2018 and accordingly a hearing was held on February 7, 2018.

The employer brought approximately sixty (60) odd pages of exhibits with the expectation of presenting them as evidence at the Hearing. The Hearing Officer explained to the employers that Lab 204.07 (b) requires disclosure of evidence to all parties two (2) business days prior to the Hearing; this rule is written on all Hearing Notices. The employers held they were unaware of this rule.

The Hearing Officer informed the employers he would waive Lab 204.07 (b) contingent upon the claimant's consent. The Hearing Officer recessed the Hearing in order for the claimant to have time to review the exhibits. After reviewing the exhibits the claimant consented to their submission.

## **FINDINGS OF FACT**

The claimant worked for the employer from approximately April, 2015 through November 28, 2017 as a librarian.

Prior to the week of April 20, 2015 the claimant volunteered her time to the employer.

Each month the claimant was paid as if she worked a set of hours prescheduled by the employer. Most recently those scheduled hours were multiplied by \$11.00 to arrive at the claimant's monthly pay.

Some periods the claimant worked in excess of the hours scheduled.

On November 1, 2017 the employer notified the claimant that her scheduled hours would be decreased to twelve (12) hours per week.

On November 17, 2017 the claimant gave notice to the employer that she would be leaving their employment.

## **DISCUSSION**

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she 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.

The claimant holds she is owed \$30.00 for an incorrect federal tax withholding, \$132.00 for days not worked in November, 2017 and \$354.75 for unpaid compensatory time.

The matter of the alleged incorrect federal tax withholding of \$30.00 does not fall within the jurisdiction of this Department, therefore this Hearing Officer cannot render a decision in that matter.

The claimant resigned on November 14, 2017. The parties agree the claimant was paid for the hours she worked in the month. The claimant holds she is due the balance of the month, that is, the balance of the hours the employer scheduled her to work for the remainder of November, 2017.

The pay arrangements in this matter do not specifically address the exact remuneration to the employee. Both parties testified there was an hourly value (most recently \$11.00) when multiplied by the number of hours the employer scheduled the claimant to work per week, resulted in the claimant's monthly pay. However, there was no evidence presented to this Hearing Officer that suggests the employer would otherwise pay the employee for hours scheduled, but not worked.

The Hearing Officer finds that the claimant did not prove by a preponderance of the evidence she is owed additional wages in the amount of \$132.00 for days not worked in November, 2017

It is the employer's testimony that the claimant was hired to work fifteen (15) hours per week and to keep an administrative accounting of hours worked beyond this time. When this Hearing Officer asked the employer to clarify what she meant by "administrative accounting," the employer responded by explaining that the claimant was to keep track of this time and the employer would "consider" allowing her to use those for snow days, vacation and sick time. The Hearing Officer asked the employer if she meant "comp time," she initially responded "yes," then corrected herself and said "not like comp time."

RSA 275:43 I requires employers to pay **employees** (emphasis added) for all hours worked.

There exists a statutory provision for individuals to volunteer their time to public entities; however, a public employee may not volunteer their time to the same job they are already being paid to perform (see Lab 803.05 for the definition of bona fide volunteer). The claimant was a volunteer in her former position, she became an employee the week of April 19, 2015, and as such the employer is prohibited by statute to allow the employee to volunteer her time to get her job accomplished. As such, the claimant's accumulated time in excess of the employer imposed ceiling cannot be regarded as time donated to the employer.

Public sector employers are permitted under RSA 275:43 VII to use compensatory time off as compensation; however, subparagraph (3) requires that upon termination of employment for any reason, an employee shall be paid for unused compensatory time at the final regular rate received by such employee.

It is the employer's opinion that the claimant's accumulated time is not compensatory time; the Hearing Officer finds the only other option would have been for the employer to pay the claimant for those hours she worked in excess of the scheduled hours on the subsequent pay day.

The claimant credibly testified she used her "administratively counted" time (the time she worked in excess of the scheduled time) "as if" it was compensatory time. On at least two (2) occasions she used, and was paid for, this time for vacations.

The Hearing Officer finds the claimant accumulated work time in excess of the scheduled time to be compensatory time, and thus governed by RSA 275:43 VII (3), and as RSA 275:43 VII (3), requires that upon termination of employment for any reason, an employee shall be paid for unused compensatory time at the final regular rate (emphasis added by this Hearing Officer) received by such employee, the Hearing Officer finds the claimant has proved by a preponderance of evidence that she is owed for 32.25 hours worked multiplied by \$11.00 or \$354.75.

The Hearing Officer finds the claimant proved by a preponderance of the evidence that she is owed additional wages in the form of unpaid compensatory time in the amount of \$354.75.

### **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 275:48 prohibits an employer to make unauthorized deductions for employees' wages and as this Hearing Officer finds the claimant did not prove by a preponderance of the evidence she is owed

\$30.00 in withholding from her pay, the Hearing office finds this portion of the Wage Claim to be invalid.

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 Hearing Officer finds the claimant did not prove by a preponderance of evidence she is due for hours scheduled but not worked, the Hearing office finds this portion of the Wage Claim to be invalid.

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 VII (3) requires that upon termination of employment for any reason, an employee shall be paid for unused compensatory time at the final regular rate received by such employee and as this Hearing Officer finds the claimant proved by a preponderance she is due unpaid compensatory time in the amount of \$354.75.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$354.75, less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

Date of Decision: March 15, 2018

Original: Claimant  
cc: Thayer Public Library,  
Attention: Elizabeth Mitchel Briggs