

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Eastern Propane Gas, Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I, unpaid wages, bonus
RSA 275:43 V, unpaid earned time

Employer: Eastern Propane Gas, Inc., 28 Industrial Way, Rochester, NH
03867

Date of Hearing: March 15, 2018

Case No.: 56685

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns alleged unpaid paid time off (PTO) and bonus.

The claimant asserts that the employer owes him one hundred four (104) hours of PTO and two bonus payments.

The employer argues the claimant did not meet eligibility requirements to receive the bonus or PTO and therefore is not owed further wages.

On the basis of the claimant's assertions he is owed bonuses and a payout of PTO the claimant filed a Wage Claim with this Department on January 22, 2018; a Notice of Wage Claim was forwarded to the employer on January 23, 2018. The employer's objection was received on January 30, 2018 and forwarded to the claimant on January 31, 2018. On February 9, 2018 the claimant requested a Hearing. A notice of Hearing was sent to the parties on February 16, 2018. Employer's exhibits were received from the employer on March 1, 2018 and claimant's exhibits March 1, 2018. Accordingly a Hearing was held at the New Hampshire Department of Labor on March 15, 2018.

FINDINGS OF FACT

The claimant began work for the employer as a propane service technician on October 24, 2017. The claimant resigned his position; his last day of work was December 27, 2017.

The claimant was paid \$25.00 per hour and paid weekly.

The parties agree the claimant was offered eligibility to a hiring bonus of \$2,500.00 to be paid in two equal installments, one after sixty (60) days of employment and the other after one hundred twenty days (120) of employment. *See employer's objection exhibit.*

The claimant was employed for sixty-five (65) days.

The employer maintains an employee handbook. The claimant signed an acknowledgement form that he read and understood the employer's policy on October 31, 2017.

DISCUSSION AND CONCLUSIONS

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.

New Hampshire statute RSA 275:42 III defines wages "means compensation, including hourly health and welfare, and pension fund contributions required pursuant to a health and welfare trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of an employee and agreed to by his employer, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation" (emphasis this writer's).

RSA 275:43 V reads in relevant part:

"...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]."

The employer's offer letter to the claimant dated October 20, 2017 and part of the claimant's exhibits reads in-part:

Hiring Bonus

You are eligible to receive a hiring bonus of \$2,500 under the following terms and conditions: The bonus will be paid in two installments. The initial installment (\$1,250) will be paid following your first 60 days of employment. The bonus payments will be made through the next regular payroll cycle following your 60 and 120 day employment dates."

The time period the claimant was employed, from October 24, 2018 through December 27, 2018 (inclusive) is equal to sixty-five (65) days.

The claimant argues he is entitled to both of the installments.

The employer argues that “Fundamentally, an employment bonus refers to ongoing employment,” and reasons that because the claimant left suddenly he is not entitled to any of the bonus.

A plain English reading of the employer’s offer finds that the only conditions placed upon the bonus payments is that they would be paid in two installments, one after sixty (60) days of employment, the other after one hundred twenty (120) days of employment.

This Hearing Officer finds the employer’s argument that an employment bonus refers to ongoing employment is not persuasive.

This Hearing Officer finds the claimant is owed the first scheduled bonus payment as the claimant was employed in excess of sixty (60) days. This Hearing Officer finds that the claimant is not entitled to the second bonus payment as his length of employment was well short of the required one hundred twenty (120) days of employment required for the second bonus installment.

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 this writer’].

Earned time only becomes wages “when due.” “When due” is a reference to contingencies specified in employers’ policies.

The claimant holds he is due one hundred four (104) hours of accrued PTO. He presents as evidence a copy of his last wage statement that indicates he has a balance 104 hours of PTO.

The employer explained that the notation on the claimants wage statement is inaccurate stating that first year employees accrue PTO at rate 10.66 hours per full calendar month and as the claimant worked only one full month, November, he had accrued 10.66 hours of PTO.

The employer’s policy states in-part; “Full-time employees who are involuntarily separated or terminate from employment for any reason or who resign without providing the requested notice, will not be paid for any accrued or unused PTO,”. The employer’s policy requests a two week notice when resigning.

The claimant is bound by the written terms of the employer’s policy and therefore this Hearing Officer finds the claimant did not prove by a preponderance of evidence that he is owed accrued PTO.

DECISION

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 regards personal days to be wages when due and as this Department finds that the claimant did prove by a preponderance of the evidence that he is owed additional wages in the form of accrued PTO, 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 I requires that an employer pay all wages due an employee and as RSA 275:42 III defines wages to “means compensation, including hourly health and welfare, and pension fund contributions required pursuant to a health and welfare trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of an employee and agreed to by his employer, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation and as this Department finds that the claimant did prove by a preponderance of the evidence that he is owed additional wages in the form of an unpaid bonus, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,250.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,250.00, less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

David M. Zygmunt
Hearing Officer

Date of Decision: April 13, 2018

Original: Claimant

Cc: Eastern Propane Gas, Inc., 28 Industrial Way, Rochester, NH 03867
Attention: Brian Boudreau

DMZ/nm