

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SAS Retail Merchandising Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid sick pay, vacation pay and employee expenses

Employer: SAS Retail Merchandising Inc, 1575 N Main St, Orange CA 92867

Date of Hearing: April 19, 2018

Case No.: 56794

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant had originally filed this wage claim in Small Claims Court, which directed him to this Department.

The claimant originally asserted, through the filing of his wage claim, that he was owed:

- \$619.22 in unpaid wages for his final pay check
- \$50.51 for an overpayment of dental insurance
- \$10.74 for an overpayment of vision insurance
- \$416 for 32 hours of unpaid sick pay at \$13 per hour
- \$80.08 for 6.16 hours of unpaid vacation pay at \$13 per hour
- \$90 filing fee for Small Claims Court and
- \$5.50 in copy expenses for claim

The Department notified the claimant this Department does not have jurisdiction for the claim for \$90 filing fee for Small Claims Court and \$5.50 in copy expenses for claim, which were removed from the claim.

The employer denies the claimant is due any wages. They paid the claimant his final wages due via the payroll card which he signed up for during open enrollment effective January 1, 2018. They made the proper deductions for dental and vision insurance and he received the benefit he paid for. The company policy does not allow for the payment of sick pay at the end of employment and the claimant was paid for the 6.16 hours of vacation pay.

FINDINGS OF FACT

The claimant worked for a previous employer, Advantage Solutions, who sold the company to the current employer effective January 1, 2018. His last day of employment was on or about January 19, 2018.

The claimant argues he is due his final wages in the amount of \$619.22 as the employer provided his wages via a payroll card, when he requested direct deposit. He further argues he is due \$50.51 for an overpayment of dental insurance, \$10.74 for an overpayment of vision insurance, \$416 for 32 hours of unpaid sick pay at \$13 per hour and \$80.08 for 6.16 hours of unpaid vacation pay at \$13 per hour.

The employer argues that they paid the claimant his final wages due via pay card which he signed up for during open enrollment effective January 1, 2018. They made the proper deductions for dental and vision insurance and he received the benefit he paid for. The company policy does not allow for the payment of sick pay at the end of employment and the claimant was paid for the 6.16 hours of vacation pay.

The parties agree the claimant was due \$619.22 for his final paycheck due January 27, 2018. The issue of wages due arises because the employer provided the claimant's final wages via payroll card, not the direct deposit he claims he asked for on the online enrollment. The claimant, after reviewing the payroll card documentation, feels he cannot get his full pay under the requirements of the payroll card and associated check.

While a review of the payroll card documentation appears to allow the withdrawal of the full amount of funds without any fees associated as required by RSA 275:43, the claimant does not agree and is unable to complete the instructions.

As the claimant still does not have the funds for his wages due and is unable to procure them, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages in the amount of \$619.22.

The claimant's argument that the employer deducted more premium than they should have for his dental and vision insurances is not persuasive as there is nothing to show the costs of the insurances is inaccurate. The claimant did note that he was unable to procure proof from the employer of the cost of the insurances. He could not articulate why he believed the amounts to be incorrect.

The employer provided credible testimony that the claimant had the use of the insurance benefits.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed insurance payments.

The claimant seeks payment for 32 hours of sick time accrued at the time of his separation because it was on his paystub.

The employer credibly argues the written policy notifies the claimant that sick pay is not paid out upon separation, no documentation submitted.

The claimant made no argument regarding the written policy or that he was unaware of the policy.

RSA 275:49 allows an employer to determine whether or not any accrued time is paid out to employees.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the sick pay under the written policy of the employer.

The claimant seeks payment for 6.16 hours of vacation time accrued at the time of his separation.

The 6.16 hours of vacation pay are part of the calculation for first claim for \$619.22 for the wages due January 27, 2018. Therefore, it cannot be claimed separately.

DECISION AND ORDER

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 proved 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 valid in the amount of \$619.22.

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 is owed the claimed wages for insurance deductions, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers sick 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 sick pay, it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$619.22, less any applicable taxes, within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: May 2, 2018

Original: Claimant
cc: Employer

[REDACTED]