

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Town of Bristol

DECISION OF THE HEARING OFFICER

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

Employer: Town of Bristol, 230 Lake St, Bristol NH 03222

Date of Hearing: June 7, 2018

Case No.: 56889

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$23,487.86 in unpaid sick pay due upon his separation from employment.

The employer denies the claimant is due any sick pay pursuant to their written policy.

FINDINGS OF FACT

The claimant worked for the employer for several years, but most recently as the Chief of Police under a three year agreement dated March 7, 2016. The claimant resigned his position on October 3, 2017, as allowed under Section 11B of the agreement and the employer, as allowed in the same section, relieved the claimant of his duties the following day.

The claimant is satisfied with the payments he received for his salary, 100% of his accrued vacation pay and 100% of his accrued bonus day pay.

He did not receive any payment for any of the 610.55 hours of accrued sick pay and seeks payment as due.

The claimant argues the employment agreement he had with the Town should be the controlling document. Section 6 Vacation says that he will be entitled to vacation, personal, sick and bonus days in accordance with and to the extent provided in the Town's personnel policies.

Further, he argues that section 10 Other Benefits states in relevant part, “in the event of a conflict between the terms of this document and the Town’s personnel plan, then the terms of this document shall be considered controlling.”

Section 11B Termination of Agreement by Employee, reads in relevant part, “[the employee] is subject only to payment by the Town in full for all accrued salary and benefits through the end of the 90 day period.” The Town also paid 100% his vacation days and bonus days, which were over the cap set forth in the Town’s personnel policy.

The Town’s personnel plan section 9.3 Sick Leave allows for a payment of sick time to certain retiring employees. It reads, in relevant part, “With all other terminations of employment, employees shall not be paid for accrued sick time.”

The claimant now argues that section 11B of the agreement states he will be paid for all accrued salary and benefits. Though that is in conflict with the Town’s personnel plan, section 10 of the agreement says that the agreement is the controlling document, and he should be paid for all accrued sick time.

The parties continually bantered about contract and contract law. This Department does not have jurisdiction over contract law. For this issue, we are concerned with notice.

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 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 Town properly noticed the claimant, through his agreement section 6 Vacation, that “The employee shall be entitled to vacation, personal, sick and bonus days in accordance with and to the extent provided for in the Town’s personnel policies.”

The Town properly noticed the claimant of the Town’s personnel policy, with two acknowledgements signed by the claimant on August 5, 2014 and April 10, 2015, in which section 9.3 Sick Leave allows for a payment of sick time to certain retiring employees. It reads, in relevant part, “With all other terminations of employment, employees shall not be paid for accrued sick time.”

The claimant’s argument that section 10 Other Benefits of the agreement states in relevant part, “in the event of a conflict between the terms of this document and the Town’s personnel plan, then the terms of this document shall be considered controlling”, is not persuasive. This statement is specific to the section of the agreement which discusses “other benefits”. Sick pay is specifically drawn out under section 6 Vacation. Therefore, the statement of conflict belongs only to the benefits under section 10 and does not apply to sick pay.

The claimant's argument that section 11B requires the payment of all accrued salary and benefits is also not persuasive. Nothing in the agreement defines benefits under section 11B, particularly as including sick pay.

The fact the Town paid 100% of the vacation and bonus days, over the cap in the Town's personnel policy does not mean that the sick policy as defined in the Town's personnel policy is null and void.

The Town properly noticed the claimant, through the agreement that the Town's personnel policy governs sick pay. Nothing else in the agreement preempts the notice provided in the Town's personnel policy that sick pay is forfeited with all separations save retirement under certain circumstances.

Because the Town properly noticed the claimant of the policy and practice regarding sick pay, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed sick pay under the agreement or 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 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 the Wage Claim is invalid.


Hearing Officer

Date of Decision: June 20, 2018

Original: Claimant
cc: Employer