

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

King Auto, LLC  
d/b/a Steve King Auto

**DECISION OF THE HEARING OFFICER**

**Appearances:** [REDACTED] Claimant  
[REDACTED], Manager, King Auto, LLC

**Nature of Dispute:** RSA 275:43 I Unpaid wages  
RSA 275:43 V Unpaid vacation  
RSA 275:48 VIII Illegal Deductions from Wages

**Claimant:** [REDACTED]

**Employer:** King Auto, LLC; d/b/a Steve King Auto, 321 Main Street  
Nashua, NH 03060

**Date of Hearing:** May 9, 2018

**Case No.:** 56948

**BACKGROUND AND STATEMENT OF THE ISSUES**

The employer provides auto repair services in Nashua, New Hampshire.

The claimant worked as an auto mechanic for the business before and after a change in ownership on May 1, 2017.

The current issues concern alleged unpaid vacation in the amount \$720.00 and a child support deduction not forwarded to the payee in the amount of \$200.00<sup>1</sup>.

On the basis of the claimant's assertions he is owed unpaid wages in the form of unpaid vacation he filed a Wage Claim on March 27, 2018. A Notice of Wage Claim was forwarded to the employer on March 28, 2018. The employer's objection was received on April 5, 2018 and a Notice of Employer's Objection forwarded to the claimant the

same day. On April 11, 2018 the claimant submitted an additional claim for \$200.00<sup>1</sup> for a deduction of child support not forwarded to the payee. On April 11, 2018 both parties requested a Hearing. Notices of Hearing were forwarded to the parties on April 18, 2018. Additional exhibits were received by the claimant on May 1, 2018. Accordingly a Hearing was held at the New Hampshire Department of Labor on May 9, 2018.

### **FINDINGS OF FACT**

The employer operates an auto repair and used car business in Nashua, New Hampshire. He purchased the business on May 1, 2017.

The claimant worked for the business's previous owner continuing to work for the current owner.

The claimant was paid \$18.00 per hour on a flat rate basis as an auto mechanic.

The claimant's employment was terminated on March 10, 2018.

The claimant testified he had an agreement with the previous owner of the business with regards to vacation time that granted him the benefit of being paid out for accumulated vacation time in the event of separation. The claimant testified the arrangement was a verbal agreement.

The employer testified he was never informed of such an agreement. The employer testified he maintains the same benefit policy that was in effect with the previous owner.

### **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 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.

As RSA 275:43 V states in-part that vacation pay, when such a benefit is a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, **when due** [emphasis added]. Vacation time only becomes wages "when due." "When due" is a reference to contingencies specified in employers' policies.

The employer maintains a vacation policy. The policy specifies that employees are entitled to paid vacation after the employee's first year of employment.

The claimant began working for the employer the day he purchased the business on May 1, 2017. The claimant's last day of work was March 10, 2018; his length of employment was a little over ten (10) months.

Although the employer's policy does not speak to the status of earned vacation time upon separation, the issue is moot in this particular circumstance because the Claimant had not yet met the condition of a year's employment to have earned the benefit.

<sup>1</sup> The claimant testified his child support claim was satisfied prior to the Hearing; the employer had forwarded the \$200.00 to Massachusetts Child Support / Department of Revenue.

The claimant testified he had an oral agreement with the previous owner that would have given him a payout of the balance shown on his wage statement. Given the lack of credible evidence to substantiate this argument this Hearing Officer is not persuaded the claimant is due a payout of vacation time.

The hours noted on the vacation line of the claimant's wage statement are consistent with the employer's policy. The policy notes that employees accrue vacation time at the rate of 3.3 hours per month; but, the policy qualifies that employees will be able to use the time after a year's employment.

This Hearing Officer finds that the claimant did not meet his burden to prove by a preponderance of evidence that he is due wages in the form of unpaid vacation.

### DECISION

Based on the evidence and testimony presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:43 V states that vacation pay, when such a benefit is a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, **when due**, and as the Department finds the claimant did not prove by a preponderance of evidence that he is owed unpaid vacation it is hereby ruled this Wage Claim to be invalid.

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[REDACTED]  
Hearing Officer

Date of Decision: June 8, 2018

Original: Claimant

Cc: King Auto, LLC, 321 Main Street, Nashua, NH 03060  
Attention: [REDACTED]

[REDACTED]

<sup>1</sup> The claimant testified his child support claim was satisfied prior to the Hearing; the employer had forwarded the \$200.00 to Massachusetts Child Support / Department of Revenue.