

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

v.

Nashua School District

DECISION OF THE HEARING OFFICER

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

Employer: Nashua School District

Date of Hearing: June 4, 2018

Case No.: 57071

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant worked part-time for the employer for over three (3) years.

The current issue concerns unpaid vacation time at the time of separation. The dispute in this matter is how a vacation “day” is defined.

The claimant’s version equates a vacation “day” as eight (8) hours.

The employer’s definition of a part-time employee’s vacation “day” is a daily unit earned at three-quarters that of a full time employee.

The employer made a pay-out of the claimant’s accrued vacation time. The claimant holds she is owed the accrued vacation time calculated as a function of an eight (8) hour “day” and seeks the difference from what she feels she is owed for eight (8) hour vacation “days” less the employer’s pay-out.

The employer argues the pay-out of the claimant’s vacation time was calculated correctly based upon 27.5 daily units.

On the basis of the claimant’s assertions she is owed unpaid wages in the form of improper accrued vacation pay-out she filed a Wage Claim with the Department on April 20, 2018; a Notice of Wage Claim was forwarded to the employer on April 23, 2018. Absent a response from the employer the Department forwarded Hearing Notices to the parties on May 16, 2018. Accordingly a Hearing was held at the Department on June 4, 2018.

FINDINGS OF FACT

The claimant worked for the employer part time, six (6) hours per day, thirty (30) hours per week, as a data analyst.

The claimant earned a salary of \$50,619.81 per a two hundred sixty (260) day period; she was paid \$1,946.91 biweekly which equates to a \$194.69 daily rate.

The claimant resigned her position; her last day of work was March 19, 2018.

The parties agree the claimant had accumulated 27.5 “days” of vacation time at separation. The parties disagree as to what constitutes a “day.”

On March 29, 2018 the claimant received her final pay. Included was a pay-out of vacation time in the amount of \$5,357.91 or 27.5 “days’ earned multiplied by a daily rate of \$194.69.

The claimant argues her accumulated time is expressed as eight (8) hour “days.” She holds the payment was \$1,786.27 short of the \$7,144.18 she is due.

The employer argues the claimant’s accumulated time is an expression of daily units consistent with their policy for part-time employees.

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 by this writer]. Vacation time only becomes wages “when due.” “When due” is a reference to contingencies specified in the employers’ policies.

The employer maintains a vacation policy. The employer’s policy states in-part “Vacation leave and accruals for part-time employees will be prorated based on the Standard Hours for the position.”

As a part-time employee the claimant earned fifteen “days” of vacation per a 260 day period; this is three-quarters of the twenty days (20) full-time employees earn.

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 since the claimant and employer both agree there was a pay-out due.

The claimant argues the vacation days reflected on her wage statements were an expression of the number of eight (8) hour vacation “days” she accrued. She calculates the total dollar amount for her accrued 27.52 “days” to be \$7,144.00.

This Hearing Officer finds the employer's use of the phrase "Standard Hours for the position" in their policy to be unambiguous and its plain meaning to convey what is "customary" or "usual." In this case "Standard Hours" for a part time position equates to six (6) hours per day or thirty (30) hours per week or three-quarters that of a full-time employee. Further, the employer credibly testified that the accrual and use of a vacation "day" is based upon daily units, not hourly units.

The claimant pointed to what she perceived to be discrepancies in the accounting of her vacation time on her wage statement that leads her to believe the value of a vacation day to be eight (8) hours. If valid, it is the employer's policy that supersedes an error on the claimant's wage statement.

This Hearing Officer finds the employer acted consistent with their policy and the requirements of RSA 275:43 V.

In the end it is the claimant's burden to prove by a preponderance of evidence that what she claims is true. This Hearing Officer finds the claimant was unable to do so.

Therefore, this Hearing Officer finds the claimant did not meet her burden to prove by a preponderance of evidence that she is owed wages in the form of unpaid vacation time.

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 when due, and as the Department finds the claimant did not prove by a preponderance of evidence that she is owed unpaid vacation it is hereby ruled this Wage Claim to be invalid.

Hearing Officer

Date of Decision: July 3, 2018

Original: Claimant

Cc: Nashua School