

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

McLaughlin Transportation Systems, Inc.

DECISION OF THE HEARING OFFICER

Appearances:

Nature of Dispute: RSA 275:43 I Weekly, Unpaid Wages
RSA 275:43 V Weekly, Unpaid Vacation Pay
RSA 275:48 I Withholding of Wages, Illegal Deductions from Wages

Claimant: [REDACTED]

Employer: McLaughlin Transportation Systems, Inc.

Date of Hearing: September 12, 2018

Case No.: 57513

BACKGROUND AND STATEMENT OF THE ISSUES

The employer is a regional provider of moving services.

The claimant worked as a short-haul truck driver for the employer.

The current issue concerns alleged unpaid vacation time upon separation and alleged improper deductions from wages for which the claimant is seeking a total of \$884.48

The employer holds the claimant is not owed vacation pay per company policy and that the deductions which occurred were appropriate.

On the basis of the claimant's assertions he is owed unpaid wages

he filed a Wage Claim with the Department on July 13, 2018. A Notice of Wage Claim was forwarded to the employer on July 16, 2018. The employer's objection was received on July 23, 2018; a Notice of Employer's Objection was forwarded to the claimant on the July 24, 2018. The claimant requested a hearing on August 3, 2018 and Notices of Hearing were forwarded to the parties on August 21, 2018. Accordingly, a Hearing was held at the Department on September 12, 2018.

The evening prior to the Hearing the claimant informed the Department he was cancelling the Hearing. None-the-less the parties arrived for the Hearing at the previously scheduled time. The claimant explained there was no settlement amount; rather he had plans to return to the company and chose to withdraw the claim for that reason.

The employer asked for the Hearing to proceed explaining he wanted to make sure that he was conducting his business properly in terms of labor law compliance in regard to the current issues and that if the claimant was due wages, he wanted to settle with him. The claimant consented and the Hearing went forward.

The claimant amended his claim at the Hearing, withdrawing his claim for \$124.98 after the employer provided an explanation by means of an accounting demonstration as to how and why the deductions were made.

FINDINGS OF FACT

The claimant acknowledges he did not give the employer a two (2) week notice when he left on June 25, 2018. The claimant left due to a conflict with a co-worker.

The claimant had a conflict with the same individual six (6) months prior. At that time the claimant informed this co-worker that if the same circumstances were to happen again, he would quit. The claimant argues this warning is sufficient to satisfy a two (2) week notice.

The employer maintains a written vacation policy, and accordingly they testified that the claimant is not owed his accrued vacation according to the policy.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he 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.

There is no New Hampshire Labor Law that requires employers to offer paid vacation (or any other benefit) to employees. However, if vacation (or any other benefit) is offered the employer needs to comply with RSA 275:49. This statute requires in-part: " III. Make available to his or her employees in writing or through a posted notice maintained in a place accessible to his or her employees employment practices and policies with regard to vacation pay, sick leave, and other fringe benefits;..." and with Lab 803.03 (b) Every employer shall 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 employee's expenses, pension and all other fringe benefits per RSA 275: 49.

The relevant part of the employer's policy is under "RESIGNATION" and states in-part: "The company likes to have at least two weeks' notice and in must be in writing..."

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 the relevant contingencies specified in an employer's policy.

"The company likes to have at least two weeks' notice..." is not equivalent to writing: "**The company requires....**" The policy does mandate that the notice needs to be in writing.

This Hearing Officer does not regard the verbal interaction the claimant had with a co-worker when he told the co-worker if it ever happened again he would quit, as a *Notice of Resignation*.

Had the claimant informed the employer, or the appropriate representative, were it to happen again he (claimant) would **then** need to give the employer a two-week written notice, this Hearing Officer could potentially regard that as a valid two-week notice.

Further, it is unclear to this Hearing Officer if the individual who the claimant was in conflict with had the authority to officially acknowledge, on behalf of the employer, the claimant's verbal ultimatum.

This Hearing Officer finds that the claimant did not provide the appropriate notice of termination, as required by the employer's policy, in order to be eligible to receive his accrued vacation time. Therefore, this Hearing Officer finds the claimant was unable to meet his burden to prove by a preponderance of evidence that he is owed additional wages in the form of accrued vacation time.

The claimant withdrew the issue of the deductions made by the employer from his pay. Had the issue remained this Hearing Officer would have evaluated it in the context of RSA 275:48. This statute permits employers to make deductions **only in specific circumstances**.

DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee at no cost to the employee and as RSA 275:43 V regards vacation pay to be wages when due and as this Department finds that the claimant did not prove by a preponderance of evidence that he is owed unpaid wages in the form of vacation pay, it is hereby ruled that this Wage Claim is invalid.

Date of Decision: October 12, 2018

Original: Claimant

Cc: McLaughlin Transportation Systems, Inc.