

[REDACTED]

v.

Irving Oil, LTD

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I Weekly, Unpaid Wages  
RSA 275:43 V Weekly, Unpaid Vacation

**Claimant:** [REDACTED]

**Employer:** Irving Oil, LTD

**Date of Hearing:** October 10, 2018

**Case No.:** 57705

**BACKGROUND AND STATEMENT OF THE ISSUES**

The employer is a provider of commercial and residential heating services.

The claimant worked as a propane and oil service technician for the employer's residential and commercial customers.

The current issue concerns alleged unpaid wages in the form of unused vacation time upon separation; the claimant seeks \$2,165.60.

The employer holds that, per company policy, the claimant is not owed the vacation time he claims.

On the basis of the claimant's assertions he is owed payment for earned vacation time he filed a Wage Claim with the Department on August 16, 2018. A Notice of Wage Claim was forwarded to the employer on August 17, 2018. The employer did not respond to the Notice of Wage Claim. Hearing Notices were forwarded to the parties on September 21, 2018. Accordingly a Hearing was held at the Department on October 10, 2018.

This Hearing was kept open until the end of business Friday October 26, 2018 in order for each party to forward any copies of the employer's policy regarding the vacation benefit they had in their possession that would have applied at any time during the claimant's employment.

The employer forwarded a copy of a policy last revised December 18, 2015, there was no further contact from the claimant

**FINDINGS OF FACT**

The claimant worked for the employer from March 2000 through the effective date of his resignation June 22, 2018. He gave a two week notice of his intention to leave the business; the employer did not permit the claimant to work his period of notice. The claimant was earning \$27.07 per hour at the time of separation.

The claimant testified that it was his understanding from former managers of the company that the vacation time employees earn is theirs to keep and any remaining balance the employer pays out at the time of separation.

The claimant testified he had a limited window of opportunity to use the vacation time and feels the employer prorating the payout to be unfair.

The claimant received four (4) weeks of vacation on January 1, 2018. Of the four weeks the claimant was given, he used three (3) days and the employer paid him for seven (7) days. The claimant argued the employer owes him the remaining balance of ten (10) days, or eighty (80) hours multiplied by his former rate of pay (\$27.07), equal to \$2,165.60.

The employer maintains a written policy regarding their employees' vacation benefit. Section 6 of the employer's vacation policy titled "Termination" reads in-part: "Employees who resign or are terminated during a vacation entitlement year are paid out unused and unpaid vacation on a pro-rated basis, based on vacation accrual period." Section 5.2 of their policy reads in-part: "Every effort will be made to allow employees their choice of vacation; however the final vacation schedule in any year is within the Company's exclusive discretion to ensure continuous operations and sufficient job coverage."

The employer's testimony echoed their 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 currently exists that requires employers to offer paid vacation time off (or any other benefit) to employees. However, if vacation time (or any other benefit) is offered, the employer is required to comply with RSA 275:49. This statute reads 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) which reads in-part: "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 employer maintains a written policy regarding vacation time as required by RSA 275:49.

RSA 275:43 V states in-part that vacation time, when such a benefit is a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA

275:42, III. Vacation time only becomes wages “when due.” “When due” is a reference to the relevant contingencies specified in the employer’s policy.

This Hearing Officer finds the employer’s written vacation policy to be clear; vacation time is paid out on a prorated basis upon separation. The policy also states that the employer reserves discretion over employees’ vacation schedules.

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 vacation time.

### **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 time 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 time, it is hereby ruled that this Wage Claim is invalid.

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██████████  
Hearing Officer

Date of Decision: December 4, 2018

Original: Claimant

Cc: Irving Oil, LTD  
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