

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Advance Auto Parts

DECISION OF THE HEARING OFFICER

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

Date of Hearing: December 3, 2018

Case No.: 57927

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed approximately \$2,599.45 in unpaid severance pay due upon his separation from employment.

The employer denies the claimant was eligible for severance pay under their Store Closing Policy. They did attempt to find the claimant a comparable position, one of which he declined and the second he did not return their call to discuss.

FINDINGS OF FACT

The claimant worked for the employer in the Somersworth NH store from September 2010 until August 18, 2018, because the store closed.

The claimant argues he was a full time employee based on the hours on his paystub and as such, is due a severance payment because his store closed and the employer did not offer a comparable position. The position they offered him he does not view as comparable and he also argues that New Hampshire Employment Security also agreed the job was not comparable. Secondly, he did not call the employer back because the employer did not specifically notice that the voicemail message was regarding a job opportunity.

The employer argues the claimant was a part time employee based on the hours he worked and the hours he was available to work. The Somersworth, NH store was being closed and they offered the claimant a comparable position in Seabrook, NH, which he declined. The District Manager left the claimant a message to call back, but he did not return her call. She had a job offer to discuss, but does not recall the exact message she left for the claimant.

The employer's written Store Closing Policy states that upon a store closing, if they offer an employee a comparable full time position and they refuse, no severance is paid. They do not offer a part time employee severance package upon store closings.

Pursuant to Gray v Quaker Fabric 809 F. Supp. 163 (D. Mass. 1992), Snow v Borden, Inc. 802 F. Supp. 550 (D Me 1992), and Massachusetts v Morash 490 US 107, 104 l.Ed.2d 98, 109 S.Ct. 1668 (1989), severance pay offered pursuant to a written policy or practice is pre-empted by ERISA.

CONCLUSIONS

This jurisdiction is pre-empted by ERISA for a severance pay policy.

DECISION

As this jurisdiction is pre-empted by ERISA for a severance pay policy, the claimant may have cause of action in another venue.


Hearing Officer

Date of Decision: December 6, 2018

Original: Claimant
cc: Employer