

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Ri Ra Portsmouth LLC

DECISION OF THE HEARING OFFICER

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

Date of Hearing: December 3, 2018

Case No.: 57928

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserted, through the filing of his wage claim, that he was owed \$1,682.36 in unpaid vacation pay and \$876.80 in unpaid salary.

At the hearing, the claimant removed the claim for salary, and chose to continue for the unpaid vacation pay claim in the amended amount of \$1,315.38.

The employer denies the claimant is due any vacation pay under their written policy.

FINDINGS OF FACT

The claimant worked for the employer as a Kitchen Manager from November 2017 through September 2018 when he was terminated.

The claimant argues he has six days of accumulated vacation pay at the time of his termination which he believes is due to him in the amount of \$1,315.38. He argues that the written policy regarding vacation payments at separation does not apply to him because he did not have the opportunity to provide a resignation.

The employer argues that the claimant is not due any vacation pay because he was terminated for cause, as defined in their written policy, which the written policy does not allow for vacation payments at termination.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to 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 employees expenses, pension and all other fringe benefits per RSA 275:49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the vacation policy as acknowledged by the claimant's signature on November 13, 2017, for the employer's policies.

The employer's written policy reads, in relevant part, "Vacation Guidelines – Unused vacation time will be paid to those employees that are eligible who resign and work out appropriate notice (see Section 3.36) and to employees who are terminated as a result of a lay off or reasons other than misconduct (refer to Section 4 'Standards of Conduct' for definition of misconduct).

CONCLUSIONS

Because the claimant was terminated for misconduct, and the written policy expressly notified the claimant the instances and circumstances in which he would qualify for vacation payment at separation, which do not apply to his situation, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages under the written policy of the employer.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

████████████████████
Hearing Officer

Date of Decision: December 6, 2018

Original: Claimant
cc: Employer