

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Crawford-Vogel & Wenzel Oil Co. Inc.

DECISION OF THE HEARING OFFICER

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

Date of Hearing: January 9, 2019

Case No.: 58092

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$1,405.43 in unpaid vacation pay which the employer withheld from his final wages. At the hearing, he agreed he owed the employer ten hours of vacation time and amended his claim to \$1,102.50 for forty-nine hours of vacation pay at \$22.50 per hour.

The employer denies the claimant is due any further wages as he had an arrangement with the prior owner of the business (a relative of the current owner) to withhold any used but unearned vacation time at separation from employment.

FINDINGS OF FACT

The claimant worked for the employer for fifteen years until he resigned in October 2018. The employer failed to pay his final wages as the employer claimed he owed vacation time back to the company.

The claimant argues he is owed the claimed \$1,102.50 as vacation time as it is accumulated, not granted, per a conversation with the employer.

The employer argues the claimant was told during a conversation in 2003 with Richard Wenzel, the employer's brother and prior owner, that he would have to pay vacation time back if he left before it was granted.

RSA 275:48 I (f) allows an employer to recoup advance payments for the use of unearned vacation time if the employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by

RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

The employer failed to obtain a written authorization request to deduct any outstanding amount for unearned vacation time at the time when the claimant requested the time off. Therefore, the employer is precluded from making any deductions from the claimant's wages for used, but unearned vacation time.

CONCLUSIONS

As the employer failed to obtain the requirements of RSA 275:48 I (f), the Hearing Officer finds that the claimant proved by a preponderance of the evidence that he is owed the claimed wages.

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 this Department finds that the claimant proved by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$1,102.50.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,102.50, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Kelleher
Hearing Officer

Date of Decision: January 16, 2019

Original: Claimant
cc: Employer

MJK/so