

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

█  
v.

Durham School Services

Case No. 100098

DECISION OF THE HEARING OFFICER

**Appearances:**

█ Claimant  
Employer, Laurie Young

**Nature of Dispute:**

RSA 275:43 V - Weekly, Unpaid Vacation Pay  
RSA 275:43 V - Weekly, Unpaid Sick Pay

**Date of Hearing:**

March 24, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The current issue concerns the employer's alleged failure to pay the claimant all the wages he alleges are due. Specifically, the claimant asserts that he is owed \$4,152.72. He alleges this is comprised of \$3,026.96 representing his unpaid Sick Pay and \$1,125.76 for unpaid Vacation Pay.

Procedural History:

- A. The claimant filed a Wage Claim with the Department on November 9, 2021;
- B. A Notice of Wage Claim was forwarded to the employer on November 12, 2021;
- C. The employer did not reply;
- D. The claimant requested a hearing on December 3, 2021;
- E. A hearing was scheduled for February 24, 2022, by Notice sent to the parties on December 17, 2021. The employer's motion to continue was granted and a new Notice was sent on March 1, 2021, for a Hearing on March 24, 2022;
- F. Submissions of the parties: The claimant submitted a letter and paystubs from December 2016, December 2017, and September 2021. The employer did not provide any submissions.

**FINDINGS OF FACT**

The following findings of fact are based on the parties' submissions, the claimant's testimony and matters of record in the Department file.

The claimant, Mr. ██████████ worked for Durham School Services for 11 years, most recently as a Driver / Trainer focusing on transportation of special needs students.

Mr. ██████████ has 2 claims. The first is regarding unpaid vacation time. As noted in his Wage Claim, he seeks payment for vacation days that he accrued in 2016 and 2017 in the amount of \$1,125.76. He testified that in early 2017 he approached the General Manager about using his 2016 accrued time for the February 2017 school vacation. This would have been fair because he forfeited that time to help the company with training. The claimant was told that it was impossible because vacation time does not carry over after the end of a calendar year. It is "use it or lose it." However, when the claimant resigned in 2021, he was surprised that he was paid for 2021 accrued vacation time that he did not use. Therefore, in light of what appears to have been a previous misunderstanding with a different General manager, he seeks payment for the vacation time remaining on his year-end paystubs from 2016 and 2017 that were submitted with this claim.

Laurie Young, Site Supervisor who manages payroll for the employer testified that there have been numerous General Managers in the past 5 years. The policy for vacation time has always been "use it or lose it." In recent years a new policy in favor of employees has been implemented. Now, upon their resignation they are paid for accrued vacation for the previous calendar year.

The next claim is for accrued sick time prior to his resignation of 157 hours valued at \$3,026.96. The claimant's paystub for September 2021, was submitted and shows this accrual. The claimant testified that he earned those hours over many years of being a dedicated employee who almost never called in sick. Those hours carry over from year to year. He was never made aware of any policy about this. Again, he asks, if the employer paid vacation time that he earned but did not use, why shouldn't they pay the sick time he earned and did not use.

Laurie Young, testified that there is no written policy. However, the long-standing policy is that sick time is not paid upon resignation. She referred to 4 previous examples of this policy being applied. In 2018 it was applied to an Assistant General Manager, in 2020 to someone with the same job as the claimant, and 2 Supervisors in 2021. All four resigned with sick time accrued that was not paid by the employer.

### **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 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.

Mr. ██████████ was a very sincere and credible witness. It was undisputed that there was no written policy, employee handbook, website or other mechanism except for word of mouth for him to understand the employer's wage policies. He was not accusatory, rather he asked if vacation time that must but used or it is lost, actually got paid when I resigned, why don't other things of value that I contributed to the employer also get paid?

With regard to the claim for vacation days that he accrued in 2016 and 2017 the Department has no authority to make a ruling. Those claims are time barred because they were raised more than 3 years after the discovery of the alleged violation, **RSA 275:41**.

With regard to the claim for unpaid sick days Mr. ██████████ did not sustain his burden to prove by a preponderance of the evidence that employer's failure to pay that was contrary to their procedure. Despite the lack of a written policy the weight of the evidence is that the employer's procedure since at least 2018 does not pay employees accrued sick days upon their resignation.

**DECISION**

Based on the testimony and evidence presented, this Department finds the claimant met has not his burden to prove by a preponderance of evidence that he is owed additional wages. It is hereby ruled that this Wage Claim is respectfully Denied.

So ordered,

April 8, 2022  
Date of Decision

  
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David I. Bailinson, Esq., Hearing Officer

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