

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

██████████  
v.

ICI Services Corporation

CASE #100231

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, self-represented  
Christopher Vrontas, Esq., representing the employer

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid bonus)

**DATE OF HEARING:** February 15, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

Claimant filed a wage claim on November 29, 2021, alleging that he separated from the company almost two years ago and has not been paid his "bonus" due under the company's employee stock ownership plan. He claims that the amount due is \$1,383.94.

Notice of claim was sent to the employer on November 30, 2021. The employer filed a response denying the claim on December 17, 2021. Claimant requested a hearing. Notice for today's hearing was sent on December 28, 2021.

**FINDINGS OF FACT**

The following findings are based on the testimony of claimant, employer's witnesses Joseph Shorter and Marcus Piquet, the employer's exhibits and hearing brief, and matters of record in the Department file. The witnesses acknowledged under oath that their written submissions to the Department were true; those statements are treated herein as part of the testimony in the case.

Claimant is 65 years old and lives in Dover. He has a bachelor of science degree in mechanical engineering. Before working for the employer, he worked for the Portsmouth Naval Shipyard for over 37 years. He was hired by the employer in January 2016 as an engineering technician, doing submarine war

package validation for the employer under its federal contract. He worked in a company office in Dover. He separated from the company on December 20, 2019 when the federal contract was awarded to a different contractor. At that point, he became the employee of the succeeding contractor and continued working on the projects he had been working on.

When he left the employer, claimant had a vested account balance in the company's employee stock option program. This was based on his four years of creditable service, which vested him in 60 percent of his ESOP shares. As of December 31, 2020, his vested account balance was \$1,383.94. Claimant asked to cash out of the plan and the employer told him he would have to wait to receive a distribution from the plan until five years after the close of the year in which his employment ended, i.e., until 2025. He filed the instant wage claim.

The employer's plan is an employee retirement benefits plan (Plan) governed under ERISA.

The employer is owned by its employees. Such ownership is realized through participation in the Plan. The Plan was developed in 2015 for the express purpose of providing a retirement benefit to employees by granting employees stock in the Company under a vesting schedule, with such stock to be held in trust during the term of employment and to be cashed out after employment termination in accordance with the specific terms of the Plan.

The terms of the Plan are set forth in the Plan document which all employees were entitled to review. All employees were provided a Summary Plan Description document which summarized terms and referred to the governing Plan document. Employees were made aware of the Plan and its benefits through these documents as well as through multiple presentations given by the Human Resources Department.

The purpose, terms, and operation of the Plan all make it plain that it is an ERISA plan. The Plan has received favorable determination from the Internal Revenue Service ("IRS") as a qualified plan under the federal tax laws. Variance from the terms of the plan could subject the plan administrators and its beneficiaries to adverse consequences imposed by the IRS, including withdrawal of IRS approval and loss of pre-tax status applicable to the beneficiaries' account balances.

While employed by the Company, claimant was given the opportunity to participate in the retirement program offered by the employer under the Plan. He took advantage of that opportunity and by the time his employment ended his vested account in the company's stock was valued in excess of \$1,000.

Pursuant to terms of the Plan, vested amounts in excess of \$1,000 were due to be paid "not later than one (1) year after the close of the fifth (5th) Plan

Year following the Plan Year in which the Participant Separated from Service.” Employer’s Exh. 6 (Plan) at section 6.3(c)(ii). Other than persons separating with vested amounts under \$1,000.00, no one separating for reasons other than death, disability, or retirement has received an early distribution.

### DISCUSSION AND CONCLUSIONS

Claimant had the burden of proving by a preponderance of the evidence that he was owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon “reliable, probative, and substantial evidence,” Department Rule Lab 204.07(n).

In this case, the facts were undisputed. The issue was a legal one: whether the benefits claimed by claimant were due. The benefits in this case were fully defined by contract, and the interpretation of the contract is dispositive of the claim.

By the plain language of the contract, because claimant separated from the company for reasons other than retirement, death, or disability and his vested amount in the Plan upon separation exceeded \$1,000, the Plan directs the ESOP administrator to commence the process of distributing his account balance not later than one year after the close of the fifth Plan year following the plan year in which the claimant separated from service. Because the employee’s separation occurred in 2019, distribution is not due to begin until one year after the close of the fifth year following 2019, i.e., until after 2025.

RSA 275:42, III defines wages as:

compensation, including hourly health and welfare, and pension fund contributions required pursuant to a health and welfare trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of an employee and agreed to by his employer, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

RSA 275:43, I provides that

I. Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis, or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph IV or IV-a(a), on regular paydays designated in advance by the employer and at no cost to the employee:

(Emphasis added.)

With regard to benefits, RSA 275:43, V provides that

Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

(Emphasis added.) “[W]hen due” is a reference to contingencies specified in the employer’s policy that the employee must meet in order to be eligible for the benefit in question.

Assuming that the benefit sought in this case—cashing out from an ESOP—constitutes wages under New Hampshire law (the employer argues that it is not), claimant has failed to prove that such wage is now due or will be due prior to some time after 2025.

Claimant’s argument that the Plan is unfair or was not adequately explained to him is unavailing in this context, as it is found that he had a fair opportunity to become fully advised as to the terms of the Plan and voluntarily opted to participate. To the extent claimant is asking for a declaration that the contract is somehow unenforceable, consideration of such relief is beyond the jurisdiction of the Department.

As such, his wage claim must fail. It is therefore not necessary to address the employer’s other arguments for dismissal of the claim.

**DECISION**

As RSA 275:43, I requires that an employer pay all wages due an employee and RSA 275:43, V treats certain benefits as wages when due, and as the Department finds that claimant failed to prove the benefits at issue are due, it is hereby respectfully ruled that his wage claim is **invalid**.

March 15, 2022  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/nd