

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Capstone Logistics

Case No.: 101142

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] Claimant

Employer: Debbie McAdoo – representing Employer

Nature of Dispute: RSA 275:43 I – Weekly, Unpaid Wages
RSA 275:43 V - Weekly, Unpaid Vacation Pay

Date of Hearing: April 11, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages due to him. Specifically, the claimant asserts that he is owed for 1 week vacation and wages for "exception pay".

The claimant filed a Wage Claim with the Department on February 18, 2022, for \$1,345.00 in unpaid vacation and wages. A Notice of Wage Claim was forwarded to the employer on February 23, 2022. The hearing request date was March 10, 2022. Hearing Notices were forwarded to the parties on March 15, 2022.

FINDINGS OF FACT

The claimant worked as a cooler dock lead for the employer from October 6, 2020 until February 7, 2022. The claimant testified that his pay was based on piecework and that he was paid \$60,000.00 per year.

The claimant testified that his position involved supervising other workers on the cooler dock in order to perform enough piecework to trigger what he termed "exception pay". The claimant testified he was required to work six days per week in June and July 2021. However, the claimant testified that he was told by his direct supervisor in mid-June that he was making too much money and could not make more than \$850.00 per week. The claimant testified that if he made less than \$850.00 he lost the exception pay, which was \$345.00 per week, because he would not be able to perform enough piecework to trigger the exception pay. In other words, the exception pay functions as an incentive bonus.

The claimant testified that after he was told he could not earn more than \$850.00 per week, he reported to work the next week and had no crew assigned to him, which did not enable him to make the exception pay. The claimant testified that when he asked his supervisor about the lack of a crew and the exception pay, he was told exception pay was a privilege and not a right. The employer's representative confirmed this policy regarding exception pay in her testimony at hearing.

The claimant testified when he was told that exception pay was a privilege and not a right, he left work during his shift. He was subsequently suspended and terminated. The employer testified that the personnel records indicated job abandonment as the reason for the claimant's separation from employment. The claimant disputed this assertion, stating that the New Hampshire Department of Employment Security found that he was terminated and that he was collecting unemployment benefits.

The claimant requests \$1,000.00 in vacation pay. The claimant testified that he calculated the value of the vacation pay by dividing his yearly salary by 52 because he received one week vacation per year. The claimant testified he was paid \$60,000.00 per year. At the hearing he calculated \$1,153.85.

The employer did not file an objection to the wage claim. The employer's representative testified that the wage claim never reached her and she had not seen it. The hearing officer stated for the record that the employer had been properly noticed. The employer's representative testified that the exception pay was a privilege and not a right and that the employer had denied exception pay to all cooler dock lead personnel.

The employer's representative testified that the employer had a paid time off policy. The policy allows one week vacation after one year of employment and that the policy allowed for payment of unused vacation time in the event of termination other than for cause. There is nothing in the record that suggests the claimant was terminated for cause.

The employer acknowledged that the claimant was not paid his vacation time. The employer's representative testified that if the employer is in the wrong the employer will settle the claim. The employer provided no other argument or evidence in support of its counterclaim.

At this point the hearing was concluded.

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 additional 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.

RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both.

Regarding exception pay, the employer has a policy. The exception pay functions as an incentive bonus. The policy was in effect at the time the claimant stopped working for the employer in July 2021. The claimant did not state that he was unaware of the policy/practice of the employer. The employer's representative testified

that all cooler dock lead personnel were denied exception pay as a matter of policy at the claimant's work location in July 2021. The claimant did not contest that testimony. The claimant walked off the job when he was informed of the policy's application to him.

It is found that the exception policy was applied consistently. Therefore, the claimant is not entitled to the \$345.00 in exception pay.

The employer has a paid time off policy. Although the policy was not introduced into evidence, the parties acknowledged that the policy allows for payment of vacation time upon termination for other than cause. The claimant was not terminated for cause. The employer did not refute any of the claimant's testimony. The employer acknowledged that the claimant was not paid his vacation time. The employer's representative testified that if the employer is in the wrong the employer will settle the claim.

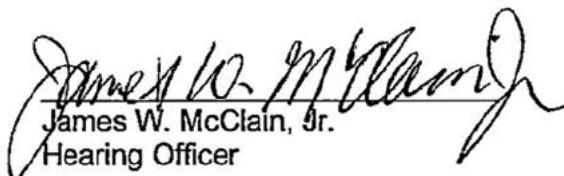
After reviewing the testimony, the claimant has provided persuasive evidence that he is entitled to receive payment for unused vacation time. It is found that the claimant has one week of unused vacation time that he was not allowed to use.

DECISION

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, sick pay, and personal days' pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that he was not paid for one week of unused vacation time.

It is hereby ruled that the Wage Claim is **valid in part** in the amount of \$1,000.00.

The employer is hereby ordered to send a check to this Department, payable to ██████████ in the amount of \$1,000.00, less any applicable taxes, with a statement of such deductions within 30 days of the date of this Order.


James W. McClain, Jr.
Hearing Officer

Date of Decision: April 26, 2022

Original: Claimant
cc: Employer

JWM/nd