

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

Center Harbor Associates, Inc.

CASE #101338

DECISION OF THE HEARING OFFICER

APPEARANCES: █ – Claimant
Robert Robillard - Employer vice president
Keil Ackerson – Employer HR representative

NATURE OF DISPUTE: RSA 275:43 I — Weekly, Unpaid Wages

DATE OF HEARING: April 19, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on March 3, 2022, alleging that she was owed \$3,178.00 in unpaid wages. Notice of the claim was sent to the employer on March 7, 2022. The employer responded on March 17, 2022. The claimant requested the hearing March 22, 2022. The hearing notice was issued March 30, 2022. The employer submitted exhibits April 14, 2022.

Specifically, the claimant alleged she is owed 110 hours of vacation pay from January 1 to December 14, 2021.

FINDINGS OF FACT

The following findings are based on testimony and matters of record in the Department file.

The claimant was the accounting manager for the employer for nearly 18 years. The claimant was paid \$2,550.00 biweekly. The claimant was terminated by the employer on December 14, 2021. The separation of employment was not mutually agreed upon; however, the parties agree that the claimant was not fired "for cause". The employer's handbook contains a policy that employees fired for cause forfeit unused vacation time.

The employer's written and oral testimony was that the claimant was not fired for cause so that she would have "a clean professional record going forward" and that it

would have been impossible to retain the claimant due to severe personality differences between the claimant and colleagues. The claimant did not dispute this testimony.

The claimant alleged in her wage claim that she is owed 110.77 hours in vacation pay, or \$3,718.00, equivalent to \$33.40 per hour. The claimant's exhibits indicate that the claimant was owed 106.34 hours in vacation pay as of December 14, 2021. The claimant was paid for 80.08 hours of vacation pay (\$2,552.92) with her last paycheck on December 14, 2021.

Under questioning from the hearing officer, the claimant acknowledged payment for 80.08 hours of vacation pay but attempted to testify that she was owed 190.77 hours in vacation pay. No evidence was offered to substantiate that assertion.

The employer's written and oral testimony was that the claimant was paid 8 weeks' severance pay to the claimant as a gesture of good will. The employer testified that the company does not offer severance pay. Under questioning, the claimant acknowledged she was paid 8 weeks' salary in the next 4 consecutive pay periods following her termination on December 14, 2021, beginning December 20, 2021 and ending on February 18, 2022. The claimant filed her wage claim March 3, 2022.

The employer's December 14, 2021 termination letter (effective immediately) to the claimant detailing the vacation and severance payments requests that the claimant direct all further inquiries regarding the issue to the human resources manager and signer of the letter, who also testified at the hearing. The claimant directed her December 15, 2021 inquiry to a manager who is no longer with the employer and was not responsible for the issue. There is no evidence of any inquiries made by the claimant to the employer after December 15, 2021.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that she is 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).

RSA 275:43 I requires that an employer pay all wages due an employee within 8 days of the expiration of the work week.

RSA 275:43 I provides, in pertinent part:

- 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...

In this matter the claimant credibly testified that she was employed by the employer. However, her written and verbal testimony that she is owed 110 hours of

vacation pay is not credible. Upon acknowledging that she was paid 80.08 hours, or \$2,552.92 in vacation pay, the claimant attempted to testify that she was owed 190.77 hours vacation pay. That testimony was not found to be credible.

After being told to direct all further inquiries regarding the issue to the human resources manager, the claimant directs her inquiry to a manager she knew was not responsible for the issue, does not inquire of the human resources manager again as directed and then filed her wage claim after receiving the 8 weeks' severance pay.

In testimony, the claimant *reluctantly* acknowledged she was paid the 80.08 hours vacation pay and 8 weeks' severance pay.

The claimant argued that the employer violated their own policy regarding vacation pay because she was not fired for cause. The employer argued that in retrospect the claimant could have and should have been fired for cause, as evidenced by previous testimony and the claimant's disingenuousness in acknowledging the vacation and severance pay.

The claimant's testimony that she is owed unpaid vacation pay is persuasive. The employer's policy states that employees, unless fired for cause, are entitled to payment of accrued vacation at the time of separation. In this case the claimant's employment was separated and she had accrued and unused vacation. However, the claimant is at most entitled to 26.26 hours of vacation pay ($106.34 - 80.08 = 26.26$). At the rate of \$33.40 per hour, the claimant would be owed \$903.34.

DECISION

Based on the testimony and evidence presented, this Department finds the claimant has not met her burden to prove by a preponderance of evidence that she is owed additional wages. It is hereby ruled that this Wage Claim is **partially valid**.

The employer is hereby ordered to send a check to this Department, payable to ██████████ in the total of \$903.34, less any applicable taxes, with a statement of such deductions within 30 days of the date of this Order.

May 12, 2022
Date of Decision


James W. McClain, Jr.
Hearing Officer

JWM/cb