

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Harmony Energy Works, Inc.**  
**Case No.: 58513**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay/paid time off (PTO)  
RSA 275:44 IV liquidated damages

**Date of Hearing:** April 15, 2019

**BACKGROUND AND STATEMENT OF THE ISSUES**

As an administrative matter, this hearing was originally noticed for RSA 275:43 I unpaid wages and 275:43 V unpaid vacation pay. The Department erroneously omitted RSA 275:44 IV liquidated damages from the Hearing Notice, though it was outlined on the Wage Claim form. At the hearing, Mr. Horrocks waived the fourteen-day notice requirement under Lab 204.02, as is allowed to hear RSA 275:44 IV at this hearing.

The claimant asserts he is owed \$13,440 for forty days of unpaid vacation pay due upon separation. He further seeks liquidated damages on the unpaid vacation pay and for the late payment of his regular salaried wages upon separation (paid six days late).

At the hearing, the claimant confirmed he is not due any further salary.

The employer denies the claimant is due any vacation pay. He further denies there was any willful delay in receiving his final wages.

**FINDINGS OF FACT**

The claimant worked for the employer as a Photovoltaic Engineer from October 8, 2014, through February 14, 2019, when he was terminated by the employer. He was initially a temporary hourly employee until February 2015, when he became a salaried employee. He most recently received a monthly salary of \$7,308.

The claimant received a check for his full salary in the mail on February 19, 2019. This check was unsigned. The claimant contacted the bookkeeper immediately. She had been out sick until February 21, 2019, when she directed the claimant to contact the employer. The parties made contact and met to sign the check on February 23, 2019.

The employer did not have a written policy regarding vacation/PTO/sick/personal days, until September 22, 2018. It is unclear as to how the written policy was disseminated and explained to employees.

The claimant indicated he felt he should receive all the paid time off benefits that the employer afforded himself.

The verbal PTO policy, as told by both parties, indicates that the claimant would receive ten PTO days after the completion of each full year of service as an exempt [salaried] employee.

### **DISCUSSION AND CONCLUSIONS**

The claimant has the burden to prove that he had forty days of vacation pay accrued to his benefit, that any unused balance was to be paid to him upon separation and the employer should be held liable for liquidated damages.

The claimant tells a story of having forty days of vacation pay accrued to his benefit, having never officially requested a vacation day. He further argues the few sick days he took, should not be counted as vacation days.

The employer argues the claimant used PTO, in a conservative estimate, of 336.2 hours, based on service dates of medical issues and observations from staff.

The employer's failure to comply with RSA 275:49 and Lab 803.03 (a) does not mean the claimant automatically prevails.

The claimant's argument that he never requested vacation or PTO and that any sick time he used for himself or his family should not be counted as PTO is not persuasive.

Based on the testimony of both parties and the documented days off by the employer, it cannot be found that the claimant had any PTO accrued to his benefit at the time of his separation. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he had any PTO accrued to his benefit upon separation or that he is due any payment of unused PTO.

Because no PTO wages are found to be due, no liquidated damages can be assessed on these wages.

The claimant alleges the employer should be held liable for liquidated damages on his final salary payment because the employer purposely failed to sign the check he received on February 19, 2019, and the employer did not sign until February 23, 2019.

The employer argues it was simply an oversight that the check mailed was not signed. He claims the bookkeeper had asked the claimant to only correspond with the employer from February 18, 2019, forward. However, the claimant attempted to contact the bookkeeper on February 19, 2019, regarding the unsigned check. As she was out sick between February 19, 2019, and February 21, 2019, she did not contact him until her return, when she advised him to contact the employer. The parties did not make contact until February 23, 2019, when the employer agreed to and met the claimant to

sign the check. He states it was a string of errors, with a best effort made to pay the claimant timely.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The claimant has the burden to prove by a preponderance of the evidence that the employer voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed, fails to pay them.

Pursuant to RSA 275:44 I, the employer is required to pay the claimant's wages within seventy-two hours. RSA 275:44 IV allows for a 10% per day penalty for willful and without good cause failure to pay the wages, excluding Sundays and legal holidays.

The employer terminated the claimant on Thursday, February 14, 2019. The claimant received a check, albeit unsigned, on Tuesday, February 19, 2019. Because February 17, 2019, was a Sunday, and Monday, February 18, 2019, was a legal holiday, liquidated damages would only be considered beginning February 19, 2019.

Though the claimant did not receive a signature on the pay check received February 19, 2019, until Saturday, February 23, 2019, the string of errors on both the part of the employer (failure to sign the check) and the claimant (failure to contact the employer for his signature) and life instances of sickness, it is not found that there was a willful intent to delay the claimant's wages.

As such, the Hearing Officer finds that the claimant fails to prove by a preponderance of the evidence that the employer should be held liable for liquidated damages.

### **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/PTO pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any vacation/PTO pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that this portion of the Wage Claim is invalid.

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[REDACTED]  
Hearing Officer

Date of Decision: April 30, 2019

Original: Claimant  
cc: Employer