

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.
SAU 86
CASE #63168

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented
Kathleen Peahl, Esq., representing the employer.

NATURE OF DISPUTE: RSA 275:43, I — Weekly (unpaid wages)
RSA 275:43, V — Weekly (unpaid vacation days)

DATE OF HEARING: October 4, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed on June 26, 2021, alleging that he worked as a facilities manager at the employer's school located at 91 Maple St., Barnstead. He advanced two claims. First, that he worked from Monday, June 21, 2021 through Friday, June 25, 2021 but has not been paid. Second, that he did not receive vacation pay for paid time off he took on Tuesday, June 29, 2021 and Wednesday June 30, 2021. His total claim is for \$1,305.50. Notice of the claim was sent to the employer on July 27, 2021. The employer filed an objection on August 9, 2021. Claimant requested a hearing on July 13, 2021 and the notice of today's hearing was sent on August 27, 2021.

FINDINGS OF FACT

The following findings are based on the testimony of the claimant, employer's superintendent Timothy Broadrick, exhibits offered by both parties, and matters of record in the Department file. During the course of the hearing, the claimant acknowledged under oath that his written submissions to the Department were true and accurate to the best of his knowledge and belief, and those statements are treated herein as part of his testimony in the case.

Claimant is 61 years old and lives in Gilmanton Iron Works. He has an associate's degree in applied business science. He has worked primarily in the

field of facilities maintenance. He has worked for the employer since 2004. For all this time, he was a salaried employee and worked under annual contracts that ran from July 1 through June 30. His annual salary for the 2020-2021 contract year was \$48,489.00. This salary was paid to him in 26 biweekly installments of \$1,864.96 (\$1,865.00 in the last check to account for rounding errors).

The employer did not renew the claimant's contract after the 2020–2021 year, thus his last day of employment was June 30, 2021. His final paystub included the following information, in pertinent part:

Name	Period	Pay Cycle	End date	Pay Date	Deposit date
██████████	26	BIWEEKLY	06/11/2021	06/18/2021	06/18/2021

The paystub also showed gross earnings of \$1,865.00 for the pay period and a vacation balance of two days.

Claimant worked from Monday, June 21 through Friday, June 25, 2021. He did not work the last three days of the contract year. Instead, he used his two remaining vacation days for June 28–29 and he expected that June 30, 2021 would simply be treated as an unpaid absence.

He testified that, based on the June 18, 2021 paystub, he understood that he had only been paid through June 18, 2021, and that he had not been paid for the five days he worked June 21–25 or the two vacation days he used on June 28–29. That was the factual basis for his wage claim.

Timothy Broadrick, 51, lives in Amesbury, Massachusetts. He is the school superintendent of SAU 86. He testified that the contract year for salaried employees coincides with the SAU's fiscal year, from July 1 through June 30. The budget for the fiscal year is approved at the annual town meeting in March. The money allocated at town meeting must be spent during the fiscal year. This includes the compensation for salaried employee such as the claimant. The SAU is not allowed to encumber the current year with salary obligations from the previous year, or to encumber future years with salary obligations from the current year.

Pursuant to claimant's contract for the 2020-2021 school year, the claimant was to receive a total annual salary of \$48,489.00, to be paid in 26 equal biweekly installments. The employer produced documentary evidence to corroborate that the claimant was paid the 26 equal instalments that added up to his annual salary.

The superintendent further testified that, as of June 18, 2021, the claimant had two unused accrued vacation days; he requested and was permitted to use these two days in lieu of working on May 28–29. The employer also produced documentary evidence corroborating this assertion.

The superintendent testified that the claimant's final paycheck dated June 18, 2021, covered the 26th pay period ending on June 30, 2021: in effect, he was paid in advance. The superintendent testified generally that, depending on what day of the week July 1 falls on, salaried employees are often paid for days they haven't worked yet. This artefact results from the fact that July 1 (the start of the contract year) can occur on any day of the week, depending on the monthly calendar, whereas the biweekly paydays always occur on Fridays. For example, July 1, 2020 was a Wednesday. The next scheduled payday was Friday, July 3, 2020, and that is the date on which claimant received his first salary installment, as shown on the first page of Er. Exh. 2. At that point, claimant had only worked three days into the 2020–2021 calendar year, but he was paid for a full 1/26th of his annual salary. The 2020–2021 contract year ended on June 30, 2021, a Wednesday. The check that the claimant received on June 18, 2021 (last page of Er. Exh. 2) covered the roughly the last fourteen days of the month (though it doesn't say so explicitly). Thus, due to the eccentricities of the calendar, claimant was again paid in advance with respect to the workdays remaining after June 18, 2021.

With regard to vacation days, the superintendent testified that the claimant used the two remaining vacation days that were shown on his last paystub on May 28–29. Technically, the other day he took, May 30, 2021, had already been paid for in check number 26. The superintendent agreed to let him take that day off anyway, rather than insisting that he work that day. This testimony was corroborated by Er. Exh. 3 & 4.

DISCUSSION AND CONCLUSIONS

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

Looking just at the information contained on the claimant's final paystub, it is understandable why the claimant would conclude that he had not been paid for his work after June 18, 2021. The paystub lists an "end date June 11, 2021," and a "pay date June 18, 2021." (The superintendent explained that these dates have relevance to hourly employees but are not particularly meaningful for salaried employees.) There is no reference on the paystub to the days remaining in the contract year, June 19–30. For a salaried employee such as the claimant, the most relevant piece of information on the paystub was the terse notation, "period 26."

Be that as it may, the employer's evidence conclusively demonstrated that the claimant received 26 equal biweekly payments that added up to his annual salary. The check dated June 18, 2021 included full compensation for claimant's work June 21–25, and also for the two vacation days he took on June 28–29, 2021.

It is therefore found that the claimant failed to meet his burden of proving that he was not paid for five days worked and two vacation days used between June 21 and June 30, 2021.

DECISION

Based on the above findings made in consideration of the testimony and exhibits submitted, the claims for unpaid wages and unpaid vacation time are respectfully ruled **invalid**.

October 20, 2021
Date of Decision


George A. Stewart, Hearing Officer

GAS/cb