

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

██████████  
v.

RTK Moving, L.L.C.

CASE #63473

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, self-represented  
Gordon Eglintine, representing the employer

**NATURE OF DISPUTE:** RSA 275:43, V — Weekly (unpaid vacation pay)  
RSA 275:43, V — Weekly (unpaid severance)\*

**DATE OF HEARING:** November 10, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a wage claim on September 16, 2021, alleging that he was the operations support manager for the claimant's moving company in Lebanon. He was let go on July 2, 2021 and the employer refused to pay his three weeks' vacation time he was owed. His claim was for \$2,850.00. In a subsequent communication to the Department, he alleged that he was not paid severance pay to which he was entitled; no monetary claim was provided.

Notice of claim was sent to the employer on September 20, 2021. The employer did not file an objection. Claimant requested a hearing on and one was scheduled by hearing notice sent October 6, 2021.

**FINDINGS OF FACT**

The following findings are based on the testimony of the claimant, employer's representative, 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 those statements are treated herein as part of the testimony in the case.

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\* Issue added at hearing without objection from employer.

The claimant is 43 years old and lives in Enfield. He completed the eleventh grade of high school and has worked primarily in the field of operations support. He was hired as operations support manager for the employer's moving company in February 2019. He was paid an annual salary of \$45,000.00, which was initially paid biweekly and in 2020 changed to weekly. He was paid by direct deposit the Friday following the end of the pay period.

His last day at work was July 2, 2021. He testified that he was let go over a disagreement with his manager about what his duties were. The manager wanted him to assist with loading and unloading and he did not believe that was part of the job he was hired to do. On this particular day, the disagreement came to a head and the manager told him he was fired. He was paid his full salary for that week, but he did not receive a vacation payout or any severance pay.

Claimant testified that his initial offer of employment letter stated that company policies would be spelled out in an employee handbook; however, he never received or saw an employee handbook. At some point, he told the employer that he had received three weeks' paid vacation in his previous job and would like the same in this one. He was told that, as a salaried employee, there were no paid vacations, but he could take off the time he needed, so long as it was approved.

Claimant testified that after Gordon Eglintine joined the company, claimant communicated with him his desire to have three weeks' paid vacation. Mr. Eglintine replied that at his other company, three weeks' paid vacation was offered to employees who had five years' tenure; however, as a salaried employee in this company, claimant could simply take the time he needed, so long as it was approved by management.

The company kept a work schedule that tracked time-off requests. In 2020, claimant took off seven days. In 2021, he had scheduled four days off; as of his last day at work, he had taken two. His pay was not docked on account of taking these approved days off.

Claimant testified that the employer had no written vacation policy and he was not clear what its practices were. He said that he heard from another employee who was let go that she received her vacation pay. He did not know how much she was paid or how much vacation time that represented.

Asked how he calculated the dollar amount he was claiming for vacation pay, claimant said it was equivalent to three week's salary.

With regard to the claim for severance pay, claimant testified that the employer had also no written policy on this subject. After he was fired, he learned that another employee, paid on an hourly basis, had been paid a weeks'

severance pay after he was let go. Claimant said that he was requesting the same, one week's severance pay.

Gordon Eglintine, 55, lives in Bow. He is a high school graduate and owns a trucking company called GMH. He became a part-owner of RTK Moving, L.L.C. in 2020. He admitted that the company did not presently have an employee handbook but said it was working on developing one. This company's number of New Hampshire employees has ranged from 12 to and 20. He stated that it was his intention that the moving company's policies mirror those in effect at GMH Trucking.

With regard to vacation policy or practice, he testified that salaried employees are allowed to take time off as needed but the company does not offer separate paid vacation time. He said that the amount of time off a salaried employee could take was a matter of company discretion; there was not an arbitrary or fixed limit. However, time off had to be approved. He stated that hourly employees were treated somewhat differently. After five years, hourly employees received three weeks' paid vacation. It was not clear whether he was referring to GMH employees or RTK employees.

With regard to severance pay, Mr. Eglintine stated that the employer has no policy or practice of paying severance to salaried employees. He testified that the instance cited by the claimant involved an hourly employee of a separate company, Daniels Pack and Ship, of which he was part owner. Management decided to shut down the business and gave the person in question one week's severance pay as a matter of discretion. Although Mr. Eglintine did not directly criticize the claimant's job performance or comment on the circumstances of his firing, he did note that it was a small company and everyone had to pitch in at times.

### **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).

Under New Hampshire law, vacation pay and severance pay, when such benefits are a matter of employment practice or policy, are considered wages when due. RSA 275:43, V. In this case, it was the claimant's burden to prove that the employer had a practice or policy of providing paid vacation days, paying out unused vacation time upon an employee's separation, and paying one week's severance pay.

It was not contested that the employer had no written policy regarding either vacation or severance pay. Although employers are required by administrative rule Lab 803.03(b) and by statute RSA 275:49, III, to put their employee policies in writing, the failure to do does not give an employee carte blanche to demand specific benefits without providing credible evidence that the company actually had a policy or practice of providing those benefits.

Claimant also testified that he had never been told by management that he was entitled to a vacation pay or severance benefit. On two occasions, he told the employer that he would like to have a three-week vacation benefit; both times he was told that no such benefit was offered, but that salaried employees such as himself could take time off subject to approval by management as to how much and when. The evidence regarding company practice was consistent with this; claimant recorded his scheduled time off on a schedule and then took that time, one week scheduled and taken in 2020 and four days scheduled for 2021 (two actually taken before his termination).

Claimant's anecdotal testimony that an hourly employee received her vacation pay after she was let go is insufficient to establish a practice of paying vacation pay. The individual at issue did not testify and claimant was at best simply repeating what she told him. Claimant did not know how much vacation she was paid in terms of money or time. The other employee was hourly, and the company's practice toward an individual hourly employee does not necessarily establish a practice toward salaried employees.

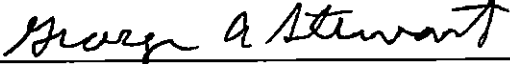
Claimant's evidence of a severance benefit was similarly lacking. There was no evidence of a written or stated policy of paying severance pay. Claimant admitted that he added this claim after he learned that another employee, an hourly one, had received one week's severance after he was fired. The employer did not deny that such a payment was made but stated that the circumstances were different. This other employee was hourly, worked for a different operation, and was let go through no fault of his own, rather than fired as a result of a disagreement over work duties..

### DECISION

As set forth in the above discussion, it is found that the claimant failed to prove that the company had a policy or practice of offering paid vacation time to salaried employees and a payout of unused vacation time on separation, or paying severance pay to employees upon termination.

Accordingly, his wage claim is respectfully ruled to be **invalid**.

November 30, 2021  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/cb