

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Harrell's Car Wash Systems, Inc.

Case No.: 63664

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] Claimant
Nick Corsano, Esq. represented the employer
Paola Filippi, HR Manager for employer
Dallas Mark, HR Director for employer

Nature of Dispute: RSA 275:43 V - Weekly, Unpaid Earned Time

Date of Hearing: January 13, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all wages due. Specifically, the claimant filed a Wage Claim with the Department October 20, 2021, asserting unpaid wages in the amount of \$9,615.40, the equivalent of 4 weeks' salary. The employer's objection to the claim was received by the Department on November 16, 2021. In response the claimant submitted e-mails and the company incentive plan agreement as exhibits the same day. The claimant submitted correspondence between the claimant and the employer dated December 9, 2021, on December 9, 2021. The claimant requested a hearing on the contested wages December 10, 2021. The employer submitted the claimant's resignation e-mail, an employee FAQ and employee handbook as exhibits January 10, 2022.

The formal hearing was scheduled at the New Hampshire Department of Labor for January 13, 2022, at 8:30 am. The claimant personally appeared, and the employer's attorney and witnesses appeared via videoconference.

FINDINGS OF FACT

The claimant was a service manager for the employer at its Seabrook, NH location. The claimant testified that he also approved payroll for the employees at the Seabrook location. He testified that he had 27 years in the car wash industry and had worked for Autoshine for 10 years, which became Harrell's in 2019. Harrell's was acquired by Sonny's October 23, 2020. Sonny's is a manufacturer and global distributor of car wash equipment, services and supplies based in Florida. Harrell's employees were made aware of the acquisition via the employee FAQ. The claimant acknowledged receiving and reading the FAQ.

The claimant testified that he resigned due to his disapproval of the treatment of an employee on May 12, 2021, by upper management, specifically the HR manager present at the hearing. He stated that as a manager he felt personally responsible for the employee's treatment. He testified he resigned May 21, 2021, via e-mail without giving any notice. In testimony and exhibits the claimant repeatedly referred to the incentive agreement as justification for his failure to give 2 weeks' notice to the employer. The claimant testified that his wage claim was for 4 weeks of unused vacation time.

The employer submitted the employee FAQ and handbook as exhibits. The claimant acknowledged receiving, reading, initialing, and understanding the FAQ and handbook several times in his testimony. The claimant specifically acknowledged awareness and understanding of the vacation, personal time and employee separation policies in the handbook.

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.

The claimant acknowledged awareness and understanding of the employer's vacation, personal time and employee separation policies. The claimant repeatedly acknowledged awareness and understanding of the incentive plan. The incentive plan and handbook clearly state that Harrell's employees are employees at will. The claimant acknowledged understanding of the employee at will concept as justification for his resignation.

The employer's vacation, personal time and employee separation policies are clearly stated in the handbook. Regarding vacation time, page 17 of the handbook reads "Unused vacation time of up to 40 hours may be carried over the next anniversary date. Any vacation time in excess of 40 hours will be forfeited." Regarding personal time, page 17 reads "Unused personal days may not be carried over from year to year, and will not be paid out upon an employee's voluntary or involuntary separation of employment." Regarding employee separation/resignation, page 36 reads "Employees who voluntarily resign and provide at least two weeks' notice of their intended resignation are entitled to receive all earned but unused vacation pay. Unused PTO will be forfeited." Regarding employee separation/dismissal, page 36 reads "Employees that are discharged by the Company are entitled to receive all earned pay, including any earned but unused vacation pay."

The claimant repeatedly testified that he was aware of and understood the above policies. His reliance on the incentive plan clause that he could terminate his employment unilaterally at any time does not negate the application of the above employer policies. The claimant appears to misunderstand the application of the employee at will concept.

The claimant submitted his and the employer's December 9th e-mail communications as an exhibit. The employer's e-mail clearly states the company's policy and offers to pay the claimant for 40 hours vacation time (\$2,403.85) and 12.86 hours which he had accrued between his anniversary date on April 11, 2021, and resignation on May 21, 2021 (\$772.67) a total of \$3,176.52 in exchange for cancelling the hearing.

The claimant responded to the employer's offer by stating that he is owed earned time and not vacation time. Neither the claimant nor the employer defined earned time. The claimant stated to the hearing officer that he was seeking payment for 4 weeks' vacation time. The employee handbook is silent on earned time. The employee handbook is clear on vacation time policy at employee separation.

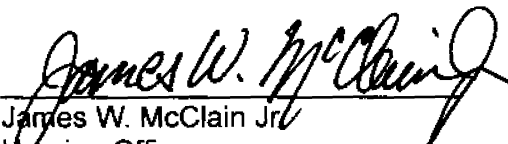
DECISION

Based on the testimony and evidence presented, and as RSA 275:43 V requires that "vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, *when such benefits are a matter of employment practice or policy, or both, shall be considered wages*" (emphasis added), this Department finds the claimant was unable to meet his burden to prove by a preponderance of evidence he is owed additional wages.

The employer has a policy regarding the payment of unused time upon employee separation. The claimant testified repeatedly that he had understood and acknowledged the policy. The claimant repeatedly testified that he did not follow the policy.

It is hereby ruled that this Wage Claim is invalid.

Such is the decision of the Department.


James W. McClain Jr.
Hearing Officer

Date of Decision: January 25, 2022

Original: Claimant
cc: Employer

JWM/nd