

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Riverside Rest Home Strafford County

Case No. 23-WG-00407

DECISION OF THE HEARING OFFICER

Appearances:

 claimant

Ray Bower, Dorothy Groulx, for employer

Nature of Dispute: ~~RSA 275:43 I – Weekly, Unpaid Wages~~
(removed by hearing officer)

RSA 275:43 V – Unpaid Vacation/Holiday/Sick Pay
(Paid Time Off) (added by hearing officer)

Date of Hearing: March 29, 2023

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages due to her. Specifically, the claimant asserts that she is owed \$745.82 in differential pay for her accrued paid time off and holiday pay.

The claimant filed a Wage Claim with the Department on January 30, 2023. A Notice of Wage Claim was forwarded to the employer on February 3, 2023. The employer responded February 17, 2023. The hearing was requested February 21, 2023. The hearing notice was dated February 27, 2023.

After examining the evidence and pleadings, the hearing officer determined that the issue was unpaid holiday pay and accrued paid time off. Therefore, RSA 275:43 I was removed and RSA 275:43 V was added.

FINDINGS OF FACT

The claimant resided in Rochester, New Hampshire at the time of the wage claim. The employer is a skilled nursing facility based in Dover, New Hampshire. The claimant worked as a licensed nursing assistant for 12 years until Friday December 30, 2022, when she retired effective Sunday January 1, 2023. The claimant testified that she had December 31, 2022 and January 1, 2023 as scheduled days off. The claimant testified that the union contract required her to retire on the first of the month. The wage claim was that the claimant also retired January 1, 2023 in order to receive holiday pay and health benefits through January 31, 2023.

Both parties agreed the claimant worked under a union contract which was not in evidence. A new contract for 2023 was tentatively approved by the membership in

2022 but per past practice the contract was not funded until March 31, 2023, when the county was required to approve or deny the contract. Current employees as of March 31, 2023 would receive retroactive raises to January 1, 2023 in April 2023.

The claimant was paid her last wages through December 30, 2022 on January 5, 2023 per the regular payroll cycle. The claimant's wage claim and testimony were that she was paid her accrued paid time off and holiday pay for January 1, 2023 on January 12, 2023. Those payments were made at the 2022 contract wage rate. The claimant's wage claim and testimony were that she is owed the difference between the 2022 rate of pay she received for her accrued paid time off and January 1, 2023 holiday pay and the 2023 rate. The claimant calculated she is owed \$745.82.

The claimant testified she requested that the January 1, 2023 holiday pay and accrued paid time off be paid to her on January 5, 2023. The claimant testified she was told by Ms. Groulx on or around December 30, 2022 that she would not be paid January 1, 2023 holiday pay on January 5, 2023 because January 1, 2023 was in the next payroll cycle. The claimant testified she was told by Ms. Groulx on or around December 30, 2022 that she would be paid for her accrued paid time off at the 2022 contract rate and not the 2023 rate because it was accrued in 2022.

The claimant testified that had the employer agreed to pay her January 1, 2023 holiday pay and accrued paid time off on January 5, 2023 she would have accepted the 2022 rate of pay.

The claimant testified she had always been paid her accrued time off at the current contract rate as she used it. The claimant offered eight years of pay stubs to prove this. The claimant testified that because she retired on January 1, 2023 and because the employer refused to pay her the holiday pay and accrued paid time off on January 5, 2023 and because the holiday pay and accrued paid time off were paid to her on January 12, 2023, she should have been paid those wages at the 2023 contract rate.

The claimant testified that the union contract required that accrued paid time off payments upon retirement be paid at the rate tentatively approved but not yet funded by the county and that other retirees had been paid in such a manner. The contract was not submitted at hearing. Claimant asserted that she did not have access to the contract.

The employer's response and testimony were that they agreed the claimant should receive the retroactive raise for the January 1, 2023 holiday pay but because the accrued paid time off was accrued prior to 2023 and the claimant's last day of work was December 30, 2022, the accrued paid time off was paid at the 2022 rate. The employer testified that the claimant was told so on or around December 30, 2022.

The employer testified that accrued paid time off was paid after the last full week of wages were paid as a matter of practice. The employer testified that retiring employees had never been paid accrued paid time off at the tentatively approved rate prior to the contract being funded. The employer testified that there was no provision in the contract requiring the claimant to retire on the first day of a month and there was no provision in the contract requiring the accrued paid time off to be paid at the tentatively approved rate prior to the contract being funded.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she 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.

RSA 275:43 V considers accrued paid time off pay to be wages when due, if a matter of employment practice or policy, or both.

The employer argued that accrued paid time off is paid at the rate in effect when the employee retires. The employer argued that the claimant retired on December 30, 2022 and accrued no paid time off after that date. The employer argued that the claimant chose January 1, 2023 as the effective date to receive holiday pay and an additional month of health benefits.

The claimant argued that although her paid time off accruals ended December 30, 2022 she should be paid out at the 2023 rate because the employer could have paid her those wages on January 5, 2023, the last pay cycle for 2022, but chose not to. The claimant argued that the union contract requires that accrued paid time off payments upon retirement be paid at the rate tentatively approved but not yet funded by the county and that other retirees had been paid in such a manner. The claimant acknowledged that she did not have a copy of the contract to present at hearing.

After reviewing the testimony and evidence, the claimant's wage claim is found to be unpersuasive. The evidence supports a finding that the claimant retired on January 1, 2023. As part of her retirement she was entitled to be paid out her accrued unused time. Logically, the value of this time would be the claimant's rate of pay at the time she retired.

Retroactive pay would not apply in this situation. The contract was not in place when the wages were paid out. The contract was ratified after the retirement was effective. Therefore, unless the contract, which was not submitted, specifically mentioned this type of retroactive pay provision, the claimant is unable to meet her burden of proof.

Both parties agreed the claimant is entitled to the 2023 rate for the wages earned on January 1, 2023, which were not due at the time of the hearing and will be retroactively paid upon the ratification of the contract in April 2023. Should the employer fail to make payment on those wages, the claimant may file a new wage claim.

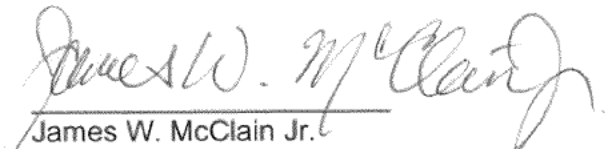
DECISION

Based on the testimony and evidence presented, as RSA 275:43 V requires that an employer pay all wages due an employee, this Department finds the claimant has failed to meet her burden to prove by a preponderance of evidence that she is owed additional accrued paid time off wages.

It is hereby ruled that the Wage Claim is **invalid**.

April 25, 2023
Date of Decision

JWM/nd


James W. McClain Jr.
Hearing Officer