

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 281/07
file number 5085019

BETWEEN REYNALDO PANTOJA
 Applicant

AND GN NETWORKS LTD
 Respondent

Member of Authority: James Wilson

Representatives: Reynaldo Pantoja in person
 David Mathieson for the respondent

Investigation Meeting: 12 July 2007 at Hamilton

Submissions received: 27 July & 17 August 2007 from the applicant

Determination: 11 September 2007

DETERMINATION OF THE AUTHORITY

Mr Pantoja's claims

[1] The applicant in this matter, Mr Reynaldo Pantoja, says that he relocated his home to the Waikato to take up a position with GN Networks Ltd (GN). He says that although he undertook some work he was never paid for that work and was subsequently unjustifiably dismissed. He asks the Authority to order that he be reimbursed for unpaid wages, expenses incurred and relocation costs and compensated for humiliation, stress and injury to his feelings.

[2] GN Networks say that Mr Pantoja was never an employee of the company and that if an offer of employment this was made on behalf of a proposed new joint-venture company, Aquasplash. GN Networks say that after some consideration they decided not to continue with their involvement in the proposed venture.

Background

[3] Although there is some difference of opinion regarding what exactly was said at various meetings, there are some matters upon which the parties agree.

[4] There is no dispute that in March/April 2006 GN entered into a due diligence process to explore the viability of a joint venture to develop a water bottling plant at Putaruru. In April 2006 the then CEO of GN, Mr Raj Ranchhod, contacted Mr Pantoja to discuss how Mr Pantoja might assist in the setting up and management of the new company.

[5] At GN's expense Mr Pantoja travelled to Auckland to discuss his possible role with the new company. According to Mr Pantoja, at a luncheon meeting on 6 June 2006 Mr Ranchhod announced that Mr Pantoja would be *handling the new Aquasplash venture*. He says that as part of this announcement, Mr Ranchhod indicated that Mr Pantoja was to be appointed as manager of the new company. Although Mr Ranchhod denies making such an announcement it is clear that he did make some statements regarding Mr Pantoja's ongoing involvement with the project.

[6] It appears there was a further meeting the following day at which a remuneration package for Mr Pantoja was discussed. It is Mr Pantoja's evidence that the day after this meeting he recorded his understanding of the details of the remuneration package in the form of a letter of offer and e-mailed this to Mr Ranchhod for confirmation and signature. I note that in his initial statement of evidence Mr Pantoja suggests that this letter formed an offer of employment from Mr Ranchhod on behalf of GN. However in later evidence he clarified that he had drafted this letter incorporating what he understood were to be the terms of his employment. He agrees that Mr Ranchhod never signed this letter. The parties agree that during these initial meetings Mr Pantoja was asked to assist with the due diligence process.

[7] In support of his argument, that he was offered employment with GN, Mr Pantoja points to the wording of two e-mails from Mr Ranchhod. The first, dated 21 June 2006 says:

As discussed with you yesterday, while I have not even had a chance to review your proposal [the "offer of employment" drafted by Mr Pantoja] I am very confident of my trust in you and for that reason had not seen what you have proposed as a priority. Either way I am sure it is fine and I know you have been discussing matters with (Duncan Wilson) anyway so I am comfortable.

The second e-mail, dated 24 June 2006 says:

If you want to be on payroll or treated as a consultant (tax wise is better for you) we can look at either option. K & G. also offered their premises for you to stay at until they move (probably next few weeks).

The contract has been reviewed by Richard and there are just a few minor points that need to be resolved but I have asked Richard to get this done asap.

Let me know your costs to date so we can compensate you. Given this water deal is not going via GNNL we will need to set up a newco and we need to finalise a relevant structure.

[8] There is no doubt that Mr Pantoja spent a substantial amount of time on the due diligence process over the next few months. Despite the suggestion in the e-mail of 24 June 2006, Mr Pantoja says he did so without payment, on the understanding that he was to be appointed as CEO of the new company and that he would receive payment for this work once the new company was established. The company's witnesses are adamant that Mr Pantoja was never offered employment with GN and that employment with Aquasplash was contingent on the outcome of the due diligence process.

[9] Although apparently Mr Pantoja was never formally advised, it appears that at some point during the second half of 2006 GN decided not to proceed with the joint-venture project. Mr Pantoja contends that he has never received payment for the work he undertook on the due diligence process and GN do not dispute this.

Discussion

[10] Is clear from the evidence before me that GN Networks did request that Mr Pantoja undertake some work -- i.e. to assist with the due diligence process. However Mr Pantoja was never offered employment with GN. If there was an offer of employment that employment was to be with the new joint-venture company "Aquasplash". The letter of offer drafted by Mr Pantoja himself says:

It is our pleasure to confirm our offer of employment to you as (CEO, General Manager, or Production Manager) at Aquasplash. In this position, you will report directly to Me, CEO of GN Networks Ltd, beginning on Monday June 25, 2006.

Mr Ranchhod's e-mails of 21 and 24 June 2006 clearly refer to the draft letter of offer and a position with the new company.

[11] I have a good deal of sympathy for Mr Pantoja. It is clear that Mr Ranchhod did invite him to assist with the due diligence process and this was clearly on the basis that Mr Pantoja would, when the new company was established, be employed in a senior management role. In good faith Mr Pantoja undertook that work only to find that GN networks had pulled out of the joint-venture and no new position eventuated. Mr Pantoja has never been paid for the work he undertook. However Mr Pantoja was never an employee of GN Networks. The work he undertook was in the nature of a consultancy - albeit with an indication that he would in due course become an employee of the new company. It may be that he has a claim against GN for that work but, unfortunately for Pantoja, the Authority has no jurisdiction to deal with such claims.

Determination

[12] Mr Pantoja was not an employee of GN Networks Ltd. The Authority has no jurisdiction to deal with any claim he may have against that company and can do nothing further for him

Costs

[13] Costs are reserved to give the parties an opportunity to settle this issue. If they are unable to do so GN Networks may file and served a submission in respect to costs within 28 days of the date of this determination. In that event Mr Pantoja will have 14 days in which to respond.

James Wilson

Member of the Employment Relations Authority