

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 63
5354266

BETWEEN	KATHERINE DELAMERE- BURR Applicant
AND	BRAND DEVELOPERS LIMITED Respondent

Member of Authority:	James Crichton
Representatives:	Applicant in Person David Chaulk, for Respondent
Investigation Meeting:	10 February 2012 at Auckland
Determination:	21 February 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Ms Delamere-Burr) alleges that she was offered a position as a copywriter by Allan Mathews who was the chief copywriter of the respondent (Brand Developers). According to Ms Delamere-Burr, she was offered a position commencing “12 weeks from June 1st 2011 if not beforehand” with a pay rate of \$27 per hour.

[2] Brand Developers says no such offer was ever made and all that the chief copywriter offered was an opportunity to be considered for a possible role at some time in the future.

[3] It is common ground that Ms Delamere-Burr approached Brand Developers’ recruitment and HR manager, Ms Hardy, in late April/early May of 2011, indicated that she had been studying writing and asked who she should contact to discuss copywriting opportunities within the business. It is common ground that Ms Hardy

referred to Mr Mathews. The only difference in the evidence between Ms Delamere-Burr and Ms Hardy is that Ms Hardy maintains that she made it clear to Ms Delamere-Burr that Brand Developers was not recruiting copywriters at that time. Ms Delamere-Burr disputes that point but in all other respects, the two women's evidence tallies.

[4] Ms Delamere-Burr's evidence on oath is that she met first with Mr Mathews on 12 May 2011 and while her intention was simply to inquire about a position as a member of Mr Mathews' copywriting team, the discussion "*then turned to an interview*". Subsequently, Mr Mathews emailed a copywriting test to Ms Delamere-Burr which she completed and returned on 20 May and, having had no response from Mr Mathews by 30 May, Ms Delamere-Burr followed the matter up.

[5] Ms Delamere-Burr visited Mr Mathews in his office on 1 June 2011 and it is common ground again that Mr Mathews apologised for failing to get back to Ms Delamere-Burr about the results of her test. However, he did tell Ms Delamere-Burr that he was impressed with what she had done and according to Ms Delamere-Burr (although Mr Mathews does not remember this), she asked him for a grade out of 10 and he gave her a 7. Ms Delamere-Burr says that Mr Mathews offered her a job and that she accepted. She refers to asking him the question "*is it a done deal?*" and that he replied in the affirmative and they shook hands to seal the deal. Ms Delamere-Burr records the details of the arrangements for the position as the Authority has already noted with an hourly rate of \$27 and hours of work being 9am to 5pm Monday to Friday.

[6] Mr Mathews absolutely denies offering Ms Delamere-Burr a job. He has no recollection of the exchange in which she says that she asked if it was a done deal and he replied in the affirmative and they then shook hands. Furthermore, he says that he had no authority to offer a job and, in any event, there were no jobs. He agrees that he might well have said that there were jobs coming up (which might explain Ms Delamere-Burr's reference to the 12 weeks), because of a possible development in the Waikato which was in process. But Mr Mathews is adamant that all he was endeavouring to be was "*collegial*"; he acknowledged that Ms Delamere-Burr worked for the same organisation, acknowledged that she had good writing skills, but says that he was neither in any position to offer a job nor did he in fact do so.

[7] Ms Hardy, the recruitment and HR manager for Brand Developers, told the Authority that if the company was recruiting for copywriters, she would manage the process and there would be a formal advertising and selection regime which Mr Mathews would be an active part of but the decision making would be managed within human resources.

[8] A further curiosity is that Ms Delamere-Burr's recollection of the hourly rate that she was offered is completely out of step with the sort of rate that Brand Developers might have paid her had she been recruited as a junior copywriter (which is where she would have started). The rate she mentioned of \$27 an hour was, according to Mr Mathews' evidence, very close to his own rate of pay as chief copywriter.

[9] Ms Delamere-Burr makes the point that, while there is no documentary evidence at all to support her conviction that she was offered a position, "*there's no way I would have invested all this energy if I hadn't been offered the job*". Further, she encourages the Authority to look at the surrounding evidence which includes Ms Delamere-Burr speaking to a number of senior colleagues about the offer that had been made to her and further, invites the Authority to take note of the fact that she was congratulated by at least one of her managers for her up and coming new role.

[10] As the Authority has noted, there is no documentary evidence to support Ms Delamere-Burr's contention that she was offered employment. As close as it gets is an email from Mr Mathews dated Friday, 24 June 2011 in which he says:

What I can't do is make a firm guarantee that I'll recommend you for employment within a certain timeframe. I can guarantee that when the time comes (and I'm sure it shall) I shall be recommending you wholeheartedly.

[11] This quotation just referred to is absolutely consistent with Brand Developers' position that it had dealt with Ms Delamere-Burr as a talented colleague who wished to explore further opportunities within the business, that it had established that she had the necessary skills and aptitude to fill a copywriting role, and that it had said to her that when such a role became available, it would gladly consider her for that role.

[12] That was the position which Mr Chaulk, the chief executive of Brand Developers, took in his responses to Ms Delamere-Burr when she commenced her process of trying to resolve the employment relationship problem and that remains the

position of the company. Mr Chaulk told the Authority in his evidence that he had investigated the problem dispassionately, had spoken to each of the protagonists but had satisfied himself (having not been personally involved) that no offer was ever made to Ms Delamere-Burr and that all that happened was that she had been treated respectfully by a senior colleague who was pleased to establish she had the skills to work as a copywriter and indicated that he would be happy to recommend her for a junior copywriting position should one become available. Mr Chaulk thought it likely that the reference to the 12 week delay was a function of Mr Mathews' belief that a decision on the new direction for Brand Developers would be made within that time.

Determination

[13] Ms Delamere-Burr seeks significant compensation together with a variety of apologies, references and explanations from Brand Developers on the footing that Brand Developers offered her a copywriting position and then reneged on that offer. The Authority has made it clear to Ms Delamere-Burr in the investigation meeting that the Authority is not able to direct Brand Developers to give her explanations or provide references or apologies, even were she to be successful. The issue of compensation, however, remains open.

[14] However, in order for any compensation to be awarded, the Authority would need to be satisfied that Ms Delamere-Burr had been offered a position and that Brand Developers had, in her terms, "*reneged*" on the offer.

[15] The Authority is not persuaded that Ms Delamere-Burr has made out her case. The only evidence of an offer being made comes from Ms Delamere-Burr herself; the various other parties she relies upon for context, such as various of her managers who congratulated her, are only deriving their intelligence of the matter from Ms Delamere-Burr herself. Those senior colleagues have no independent knowledge of what happened. So it follows, if she was mistaken about what happened in her discussions with Mr Mathews, she has passed on that mistaken view to others.

[16] There is just not one piece of evidence which supports Ms Delamere-Burr's position apart from her own viva voce evidence. Mr Mathews, who is the only other person involved in the meeting in question, absolutely denies making an offer of employment and makes two subsidiary points. First, he says that he had no authority to recruit a copywriter and, secondly, he makes the point that there was no vacancy

for a copywriter. That being the case, it is difficult to see why he would have offered a position to Ms Delamere-Burr, no matter how talented she may be. Furthermore, the rate of pay that Ms Delamere-Burr claims to have been offered is clearly far too much for a junior copywriter, being nearly as much as Mr Mathews himself was paid when he was in the chief copywriter role.

[17] As Ms Delamere-Burr has failed to persuade the Authority that an offer of employment was ever made to her, her claim before the Authority fails in its entirety.

Costs

[18] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority