

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 198/07
5053989**

BETWEEN MUHAMMAD SHAHID SAJJAD
 Applicant

AND TICKETEK NEW ZEALAND LIMITED
 Respondent

Member of Authority: Leon Robinson

Representatives: Applicant In Person
 John Murdoch for Respondent

Investigation Meeting: 28 June 2007

Determination: 2 July 2007

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Mr Muhammad Shahid Sajjad ("Mr Sajjad") applies to the Authority for an investigation and asks that Ticketek New Zealand Limited ("Ticketek") be ordered to pay salary he says is owed to him in respect of his notice period following his resignation.

[2] The parties were unable to resolve the problem between them by the use of mediation.

The facts

[3] Mr Sajjad resigned from his employment as Online Producer with Ticketek on 29 August 2006. He gave written notice of his resignation by email of the same date to Ticketek's country manager Mr Brendon Bainbridge ("Mr Bainbridge").

[4] Mr Sajjad's employment agreement contained this term about termination:-

15. *Termination of Employment*

(a) *This agreement may be terminated by either party by the giving of one month's notice. This notice period can be varied in writing by agreement signed by the parties.*

(b) *Where either party terminates the agreement without giving the requisite notice, one month's salary shall be paid or forfeited (as the case may be) in lieu of notice. Where notice of termination has*

been given by the Employee or the Company, the Company shall, at any point in time, be entitled to require the Employee not to work out the full period of notice or any part thereof, but in such a case, the Company shall pay, in lieu, to the Employee the salary that the Employee would have received had the full period of notice or part thereof been worked.

[5] By the termination provision of the Agreement, Mr Sajjad's final day of service would have been Friday 22 September 2006.

[6] Mr Sajjad sent an email to Mr Bainbridge on 4 September 2006 requesting an "early release from his position" He wrote:-

I would appreciate a response from you at the earliest possible time as my new employer requires a confirmation of the date I am able to begin work with them.

[7] Mr Bainbridge replied:-

Your final day with Ticketek is that which you have indicated on your resignation letter and which you are contracted to. I will take your request under consideration and advise you of a decision as soon as possible.

[8] Mr Sajjad says that on the evening of Monday 4 September 2006 his recruitment agency emailed him and requested that he advise before midday the following day, whether he could commence a new position before the end of the week.

[9] Ms Sajjad says that as a result of the request by his recruitment agency, he sent a further email to Mr Bainbridge on 5 September 2006 at 8.41 am or 8.52 am. He wrote:-

I would like a response to this request by midday today as I need to make arrangements for a start date with my new employer.

If I do not hear from you by midday, I withdraw my offer to leave early and intend to remain at work until Friday 22nd September as I am contract.

If you subsequently decide to let me go early I expect to be paid out in full for the notice period as per my contract.

Thank you

[10] Mr Bainbridge did not respond to Mr Sajjad by midday.

[11] At about 1.00 pm Mr Bainbridge was advised by Ticketek's Australian management that Mr Sajjad's request was approved.

[12] At about 2.40 pm Mr Bainbridge met with Mr Sajjad. Mr Sajjad says Mr Bainbridge told him *"we would like to meet your request and release you early. There is no need for you to finish the rest of the day"*. Mr Sajjad says he then advised Mr Bainbridge *"the offer I made expired at 12 and I had told my other employer I had made other arrangements and they have made other arrangements"*. Mr Sajjad says that Mr Bainbridge then said *"I don't want to talk about it now, I will talk to Australia and get the matter sorted"*. Mr Sajjad cannot recall what he then said but he does recall that he then shook hands with Mr Bainbridge and thanked him. He says he then left his office and said goodbye to his colleagues. He then left Ticketek.

[13] Mr Bainbridge has a different account of the discussion. He says that he told Mr Sajjad that he had spoken to Shawn & Kelly and that his (Mr Sajjad's) role could be covered and he was free to go if he chose. He says that Mr Sajjad accepted and then they shook hands. Then he said he accompanied Mr Sajjad to Mr Sajjad's office and saw that his office had already been cleared. Then Mr Sajjad left Ticketek after he had said goodbye to his colleagues.

The merits

[14] Mr Sajjad's witness statement says of the exchange in Mr Bainbridge's office:-

I was told there was no need for me to work the rest of the day and I was required to leave

[15] He confirmed however, that he was not told that he had to leave. He tells the Authority *"I took that to mean they would like me to leave."* I find that he was not required to leave.

[16] On balance, I accept that Mr Sajjad did say to Mr Bainbridge that it was too late and that he had made other arrangements with his new employer.

[17] I agree that the Mr Sajjad's request to leave early was an "offer" that Ticketek could either accept or refuse. Mr Sajjad demanded a response by 12.00 pm and I find that Mr Bainbridge was aware of this and took steps so as to give a response by that time. There was however, no response by midday and therefore Mr Sajjad's "offer" to leave early had expired.

[18] When Mr Bainbridge advised Mr Sajjad that his request of 4 September 2006 to leave at the end of the week or earlier was approved, Mr Sajjad advised it was too late. But I find that he was

not required to leave and nothing Mr Bainbridge told him could be regarded as a sending away in the nature of a dismissal or a requirement that he leave. Because of that finding Mr Sajjad, I further find, was then entitled to affirm his notice period but I find that he did not. He did not say he would serve out his notice. Rather, he chose to accept what was a new offer by Ticketek to release him early. That was entirely a matter of his own choosing. He was not required to leave early. I find that he accepted that he was free to leave early, not that he was required to leave. I find then, that his employment came to end on 5 September 2006 by a mutual agreement.

The determination

[19] I find that Mr Sajjad left his employment with Ticketek on 5 September 2006 by mutual agreement of both parties. I find that he has no entitlement to salary from 6 September 2006 to 22 September 2006. There will be no formal orders.

Costs

[20] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Mr Murdoch is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Mr Sajjad is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination.

Leon Robinson
Member of Employment Relations Authority