

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JAMES EARLY, Plaintiff :
 :
 vs. : C.A. No. 85-0701-L
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 INSURANCE COMPANY of NORTH :
 AMERICA, AETNA INSURANCE COMPANY, :
 CIGNA COMPANIES, Defendants :

MEMORANDUM AND ORDER

RONALD R. LAGUEUX, United States District Judge.

This matter is before the court as a diversity case pursuant to 28 U.S.C. § 1332. In the first four counts of the Complaint, plaintiff alleges that defendants were in breach of his employment agreement and also were guilty of misrepresentation. In the fifth count, plaintiff alleges a violation of Title VII of the Civil Rights Act of 1964. However, through counsel, plaintiff has informed the Court that he has elected not to pursue this latter claim. Defendant Insurance Company of North America (ICNA) seeks entry of summary judgment in its favor on the remaining counts of plaintiff's complaint pursuant to Fed. R. Civ. P. 56. Defendants Aetna Insurance Company (Aetna) and CIGNA have not answered or otherwise responded to the complaint. The record contains no proof of service of

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the summons and complaint upon those two defendants. Apparently, only ICNA was served. Therefore, pursuant to Fed. R. Civ. P. 4(j) the action is dismissed, without prejudice, as to Aetna and CIGNA for failure to effect service within 120 days after plaintiff's filing of his complaint.

The essential facts are undisputed. Plaintiff was employed by ICNA from 1977 through May 1984. In 1982, ICNA and Aetna (more appropriately referred to as Connecticut General Aetna) combined to form a third corporation, CIGNA which became the parent of the two companies. Thereafter, plaintiff apparently was employed by CIGNA's ICNA division. Over the years, plaintiff served in various capacities, including claims representative, in ICNA's Wisconsin office. In July 1983, plaintiff assumed the position of claims branch manager of ICNA's Cranston, Rhode Island office. Plaintiff's relocation expenses were borne by that defendant. It is clear that this employment arrangement was not the subject of any written agreement between the parties.

Several months thereafter, in February 1984, ICNA ceased its operations in the Cranston office. Some members of the Cranston staff were offered positions in the Boston, Massachusetts office at an eight percent salary

increase. Those employees electing to decline such proffered employment were awarded "work force management benefits", which included severance pay, by the company. Plaintiff accepted ICNA's offer of continued Rhode Island employment as a claims supervisor. Under this arrangement, plaintiff used his home as his base of operations and retained the same salary grade level that he had enjoyed as branch manager.

Plaintiff alleges that in April 1984, he was informed that he was being reassigned to ICNA's Boston office but would not receive any increase in salary. In May 1984, plaintiff citing the time and monetary expense that a daily commute to Boston would entail, resigned from his position with the company. He did not receive severance pay.

Thereafter, plaintiff instituted the instant action alleging, inter alia, breach of contract and misrepresentation. In substance, plaintiff contends that agents of the company represented that his acceptance of the proffered branch manager's position would ensure continued employment in Rhode Island for a several-year period. Plaintiff also challenges ICNA's failure to award work force management benefits to him upon his resignation. He alleges that by such refusal, there was a breach of

ICNA's contractual obligations. Plaintiff argues further that ICNA misrepresented its policy concerning the issuance of severance pay.

Entry of summary judgment is appropriate when the court's review of the pleadings, depositions, answers to interrogatories, admissions and affidavits demonstrates that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). This Court's examination of the record reveals that entry of summary judgment in favor of ICNA on all counts of plaintiff's complaint is appropriate in this case.

Plaintiff has failed to produce any evidence of any agreement between the parties concerning the anticipated length of his Rhode Island employment. In fact, plaintiff's deposition testimony is to the effect that there was no such agreement. He states that the probable length of his tenure as branch manager of the Cranston office was never specifically discussed.

In asserting the existence of a contractual right to "several years" of Rhode Island employment, plaintiff relies in part upon certain statements made by ICNA's representatives prior to his acceptance of the Cranston position. During the course of the selection process,

plaintiff was apprised of certain problems that existed in the Cranston office. In such a context, plaintiff was told that the company was "committed to making a go" of the office and thus was willing to bear the expense of relocating a new manager. Such a statement cannot reasonably be interpreted as an agreement or a promise to provide plaintiff with multi-year employment.

Further plaintiff testified that his expectations concerning the term of his Rhode Island employment were based partly on his belief that if the company had anticipated a shorter tenure it would not have incurred the expense of his relocation. Such privately-held beliefs concerning ICNA's business practices and philosophy cannot be equated with, and do not evince an agreement between the parties concerning the length of plaintiff's employment. In short, plaintiff was an employee at will and could be terminated at any time.

Similarly, in view of his above-discussed deposition testimony, plaintiff's claim that ICNA misrepresented the probable duration of his Rhode Island tenure must also fail. In order to successfully maintain an action for misrepresentation, plaintiff must demonstrate that the defendant intentionally made a false representation of material fact designed to induce reliance by, and upon

which plaintiff actually relied to his detriment. Associates in Anesthesia, Inc. v. Mutual Benefit Life Insurance Co., 504 A.2d 477 (R.I. 1986). Plaintiff's deposition testimony clearly indicates that no agents of ICNA made any factual representations concerning the anticipated length of plaintiff's Rhode Island employment.

Plaintiff also alleges that ICNA breached its contractual obligations by failing to award him severance pay upon his termination. He further contends that ICNA, intending to induce his acceptance of the position of Cranston branch manager, misrepresented its policy concerning the award of severance pay and plaintiff's entitlement to such benefits in the event of termination.

However, plaintiff has not produced any evidence of any express or implied agreement between the parties, or of any representations by ICNA, concerning his future entitlement to work force management benefits. In fact, plaintiff's deposition testimony indicates that his beliefs concerning company policy were based solely upon information gleaned from his conversations with other employees whose positions had been eliminated.

It is undisputed that ICNA, at all relevant times, had a written policy of awarding work force management benefits, including severance pay, to terminated employees

in only certain circumstances. Under that policy, eligible employees included those who, despite the elimination of their current positions, were not offered suitable alternative positions within the company. Employees who resigned voluntarily were ineligible.

In asserting a contractual right to severance pay, plaintiff contends that he met the criteria set forth in the company's written policy. He argues that subsequent to the closing of the Cranston office and his commencement of his duties as an outside claims supervisor he was forced to either accept reassignment to the Boston office or to resign. Due to the geographical distance involved, plaintiff contends that the proffered Boston employment was not a suitable alternative position. Therefore, plaintiff concludes that his resignation was not voluntary.

However, in accepting the proffered Cranston employment, plaintiff did not act in reliance upon defendant's written policy concerning work force management benefits. During the course of his deposition, plaintiff admitted that he did not examine the policy statement until after he had relocated to Rhode Island. Accordingly, whether the plaintiff met the criteria set forth in ICNA's policy statement is completely irrelevant and immaterial to the issues in this case.

Therefore, it is clear that there is no issue of material fact in this case, and defendant ICNA is entitled to judgment as a matter of law.

Accordingly, ICNA's motion for summary judgment on all counts of plaintiff's complaint hereby is granted. In addition, the case is dismissed without prejudice as against Aetna and CIGNA.

It is so Ordered.

ENTER:



Judge Ronald R. Lagueux
United States District Judge

10/23/86