

DECISION OF THE BOARD

Present: Louis J. Naftalison, Isidore Schechter, John A. Rogalin, James R. Rhone, Philip F. Wexner, Members.

Claimant applies, pursuant to Section 534 of the Law, to reopen and reconsider the decision of the Board filed March 3, 1966 (Appeal Board, 128, 115), affirming the decision of the referee filed November 3, 1965 sustaining the initial determination of the local office disqualifying claimant from receiving benefits effective September 1, 1965 on the ground that she voluntarily left her employment without good cause.

A hearing was held before the Board at which all parties were accorded a full opportunity to be heard and at which claimant, her attorney and a representative of the employer and its attorney and a representative of the Industrial Commissioner appeared and testimony was taken. The Board considered briefs submitted by the attorneys for claimant and for the employer on this application.

After due deliberation having been had on claimant's application, the Board determined to reopen and reconsider its decision.

Now, therefore, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT

Claimant was employed as an airline stewardess by the employer herein from February 27, 1956 to August 31, 1965. Prior to such employment, she had worked for about five and one-half years in an insurance and real estate office in North Carolina, where she had performed general office work, including typing and the handling of insurance policies.

Claimant was sent to a training school for stewardesses maintained by the employer in Fort Worth, Texas, prior to the actual commencement of her employment. While in training on August 2, 1955, she signed a statement in which she acknowledged that she had been informed that according to the terms of the collective bargaining agreement between the employer and the stewardess' union, (of which she had to become a member), her employment as a stewardess would not continue beyond the end of the month during which her 32nd birthday falls. This policy of the employer is more fully set forth in the collective bargaining agreement between the employer and the Airlines Steward and Stewardesses Association, Local 550, TWU-AFL-CIO, which provides in substance:

"That upon reaching her thirty-second (32nd) birthday, a stewardess would be transferred to other employment within the Company unless she elected one of the following alternatives:

"(a) If she did not desire to transfer to other employment within the Company, she could elect to either terminate her employment at such time or be permitted to defer her termination date to, but not beyond, the last calendar day of the twelfth (12th) month in which her thirty-second (32nd) birthday occurs, at which time she would be terminated, in any event, or

"(b) If a stewardess elected to terminate her employment in any of the succeeding six (6) months following her thirty-second (32nd) birthday, she would be entitled to severance pay in a stipulated amount, but a stewardess who terminated her employment after the said six (6) month period, would not be entitled to severance pay.

"(c) When she reaches her thirty-first (31st) birthday and again six (6) months later the stewardess is to be interviewed and informed of her rights to transfer or the termination of her employment on reaching her thirty-second (32nd) birthday. At this time, the stewardess shall elect in writing her choice of accepting other employment or the alternative options granted her."

This agreement reserves to a stewardess her right to sue in the courts of the State of New York, in an action to test the validity of any portion of the collective bargaining agreement.

On August 13, 1963 when claimant reached her thirty-first (31st) birthday, she was interviewed by her supervisor and informed of her rights of election and options regarding her status upon reaching her thirty-second (32nd) birthday. Claimant was told she was required to make her choice by February 16, 1964. She then specified a desire to be assigned either to the "Admirals' Club" or to any position utilizing her secretarial skills and some public relations work but limited to the New York area. On February 9, 1964, claimant was again interviewed and repeated her willingness to accept a transfer to other employment