

with the Company upon reaching her thirty-second (32nd) birthday and she signed a statement to that effect.

Between June 3 and July 10, 1964, claimant was offered six office jobs with the employer, all in the New York area, which were in the following classifications: two jobs were in the general and executive offices, a job involving clerical work in a public relations office; a job as a passenger service representative at the La Guardia Airport or at a local ticket office; a job of reservation salesman at the Company's 42nd Street office and a job as a stenographer-clerk at the La Guardia Airport in New York City. All of these jobs were at claimant's regular salary as a stewardess and preserved her seniority rights. Claimant refused all of these assignments and on January 10, 1964 she signed a statement that she was not willing to accept any ground job, that she desired only the job of a stewardess. The statement read:

"The stewardess has elected to not accept transfer, but rather to terminate her employment in the twelve (12) month period following her thirty-second (32nd) birthday (which is August 16, 1964)."

Pursuant to claimant's election, her employment was terminated by the employer on August 16, 1965. Claimant filed a claim for benefits effective September 1, 1965. An initial determination was made disqualifying her from receiving benefits on the ground that she voluntarily left her employment without good cause, because she could have continued her employment with her employer by accepting a ground job. The initial determination was sustained by the referee and his decision was affirmed by the Board in Appeal Board, 128,115 filed March 3, 1966, which decision incorporated by reference our decision in Appeal Board, 118,040 (*Matter of Arnold*). This case (Appeal Board, 118,040) involved a stewardess who was employed by the same employer as was this claimant and who lost her employment under the same facts and circumstances as in this case on appeal. In that case, the Board held that the stewardess brought about her own loss of employment by her deliberate action in refusing to accept a transfer to ground employment with her employer upon reaching her thirty-second (32nd) birthday. No appeal was taken from the Board's decision in that case.

Thereafter and prior to December 16, 1964, claimant's union filed a complaint with the State Commission for Human Rights on behalf of claimant and other stewardesses similarly situated, alleging that this employer and other airlines were discriminatory in compelling stewardesses to cease flying upon reaching their thirty-second (32nd) birthday and that their discharge because of such age limitations was in violation of Section 296.1(a) of the Executive Law. This section provides:

"It shall be an unlawful, discriminatory practice:

"(a) For an employer, because of the age, race, creed, color or national origin or sex of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

Section 297 of the Executive Law provides that upon the filing of such complaint, the chairman of the Commission shall appoint one of the Commissioners as an Investigating Commissioner, who shall make a prompt investigation of the facts and determine whether or not probable cause exists for crediting the allegations of the complaint that the respondent was engaged in unlawful discriminatory practices. If the Investigating Commissioner finds that probable cause does exist, then he shall try to have the discriminatory practice eliminated through conference, conciliation or persuasion. If this fails, then the Investigating Commissioner shall cause to be issued and served upon the respondent a written notice with a copy of the complaint, directing him to answer the charges of the complaint at a hearing to be held before three members of the Commission (of which the Investigating Commissioner may not be a member) at a time and place to be fixed by the chairman of the Commission. The hearing to be held upon the complaint and answer of the respondent shall result in findings of fact and the issuance of a proper order of the Commissioner directing the respondent to desist from discriminatory practices. The validity of such ruling may then be tested in the State Courts in a proper action.

Upon the filing of the complaint by claimant's union, an Investigating Commissioner was appointed by the chairman of the Commission for Human Rights on December 17, 1965. An investigation of the charges made by the union was then held by the Investigating Commissioner. Claimant was one of the stewardesses who appeared and testified during the investigation. At the conclusion of such investigation, the Investigating Commissioner filed his report dated March 23, 1966, in which he made the following conclusions: