

"SUMMARY

"(1) None of the evidence on hand gives warrant for the establishment of an industrywide policy setting a special arbitrary chronological age for continued employment of airline stewardesses—whether age 32 or 35, or any age below that of the standard mandatory retirement age for company employees.

"(2) The evidence on hand does support the opposite position; namely, that termination as an airline stewardess prior to the employer's standard mandatory retirement age should be predicated solely on the individual stewardess' continued ability to perform the duties of the position at the level of performance required by each airline company for its stewardesses.

"(3) On the basis of the evidence before me as Investigating Commissioner, I do not find that, under the New York State Law Against Discrimination, there is support for a claim that a *bona fide* occupational qualification based on age for continued employment properly applies to the airline stewardess position on an industrywide basis."

He later filed a separate report on April 20, 1966 in connection with this claimant's complaint in which he concluded:

"Accordingly, based on the evidence before me, I find probable cause in the above-entitled case and will now go forward with the further procedures authorized by the Law Against Discrimination."

On July 28, 1966, the Investigating Commissioner filed a direction for the issuance of a notice of hearing to be held before three members of the Commission on the claimant's complaint and the respondent's answer thereto, because he did not succeed in eliminating the unlawful, discriminatory practices complained of by the claimant, through the means of conference, conciliation and persuasion.

On the basis of the proceedings held before the Investigating Commissioner appointed by the Commission for Human Rights and on the basis of his report and recommendations, the attorneys for the claimant made this application to reopen and reconsider the decision of the Board. Thereupon, a hearing was held before the Board at which claimant and her attorney and representatives of the employer and its attorney and a representative of the Industrial Commissioner appeared and further testimony was taken and the reports of the Investigating Commissioner were submitted in evidence. At this hearing claimant and her attorney conceded that no steps had been taken by her to institute any grievance procedure set forth in the collective bargaining agreement which provides:

"ARTICLE 25—GRIEVANCE PROCEDURES

"(c) GRIEVANCE—APPEAL:

"(1) A stewardess, or group of stewardesses, having a grievance concerning any action of the Company affecting her, may present her grievance in person or through her representative within seven (7) days to the appropriate Manager—Flight or his designee who shall evaluate the grievance and render his decision as soon as possible but not later than seven (7) days following receipt of said grievance."

Since the termination of her job as a stewardess, claimant has been employed as a free-lance script supervisor in theatrical and television productions. She has succeeded in obtaining three engagements in this field.

OPINION

We give full respect and consideration to the report of the Investigating Commissioner of the State Commission for Human Rights. However, such report is not a final determination of the matters concerned in the complaint against the employer.

Section 297 of the Executive Law provides that if the Investigating Commissioner finds probable cause exists to entertain the complaint, the matter is then referred to a panel of three commissioners (from which the Investigating Commissioner is excluded) and formal hearings are held and a determination made as to the existence of the discriminatory practice. Following such decision of the Commission, the aggrieved party may obtain a judicial review of the order of the Commission in the State courts. Since the Commission has not as yet scheduled hearings or rendered its decision on the complaint brought against the employer airline by the claimant and other stewardesses, this matter is still pending before it and consequently reliance cannot be had solely on the report