

of 1974. Before this new position actually began, Kathleen Beauchaine, who occupied Appellant's former permanent position resigned. On March 15, 1974, the Appellant received a telephone call from Carol Haight, the Acting Personnel Manager, offering her the position starting April 1, 1974. The Appellant indicated her interest in the position but stated she could not work for the period from April 27 through May 14 because she had scheduled an educational trip. She deferred any final decision until she could consult with the attorney handling her lay off appeal. Carol Haight and Rex Duter, the Superintendent of the Wisconsin School for Girls, both telephoned the Appellant several times after the initial offer to determine if she had made a final decision on the offer. In the course of these conversations, the Appellant engaged in detailed discussions concerning the nature of the position. She eventually decided to accept the position and begin work immediately upon her return from her trip. An LTE was hired to cover the position until the Appellant's return. With Appellant's acquiescence, the LTE was extended for two weeks to enable her to complete the school term without yet another change of teachers for the students.

On April 8, Appellant's attorney informed her that her reinstatement to her former, permanent position would occur on June 1. (Appellant's Exhibit 11). The Appellant began work on June 1 and received verification of her reinstatement in a letter dated June 3, 1974.

Conclusions of Law

This Board's Order of July 3, 1974, required the restoration of all Appellant's benefits until the time she received Respondent's "written unconditional offer of recall to active employment." The record is absolutely clear that no written offer or verification of permanent employment from the Respondent was

received by the Appellant before she had already returned to work. Thus, subject to any reduction for failure to mitigate damages, Appellant is entitled to all her benefits for the entire period of her lay off.

The Appellant concedes that she had a duty to mitigate damages. The record indicates that she voluntarily chose not to work for the period from April 1 to May 30 of 1974. Appellant's refusal without a valid reason of Respondent's offer of suitable employment was a breach of her duty to mitigate damages. The amount and nature of the benefits lost by the Appellant's breach of duty depends on whether the employment offer is characterized as one involving permanent or limited term employment. If the offer is seen as one for limited term employment, such benefits as vacation and sick leave are not lost since an LTE does not accrue those benefits. If the offer is seen as one for permanent employment, all benefits for the period could have been earned and thus are forfeited. The crux of the case is the nature of the job offered to the Appellant.

The Respondent agreed to accept the burden of proving that the Appellant was offered a permanent position to commence on April 1, 1974. We conclude the Respondent has discharged that burden of proof.

Appellant testified that she understood the offer to be part time limited term employment because the position was the same one in which she had substituted for Kathleen Beauchaine the previous summer and because the classes were again all morning classes. We conclude the Appellant's belief was unreasonable and that she was informed of the nature of the job or at least informed sufficiently to require her to make further inquiries about the job. Carol Haight and Rex Duter both testified that they told the Appellant that the position was a permanent one. They also discussed the job in detail with the Appellant. Carol Haight's testimony was substantiated by memos made contemporaneously with many of the telephone

calls in question. Moreover, the Appellant knew on April 8 that the job would be a permanent one as of June 1. Since the Appellant knew Kathleen Beauchaine had resigned effective April 1, she knew she would not just be filling in for a permanent employe on leave as she had done the previous summer. True, all the classes were morning classes but the Appellant also knew that some permanent employes were given the afternoon without classes to enable them to prepare for the next day's classes.

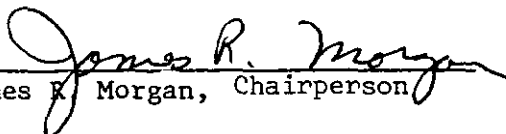
Since it is concluded that the Appellant breached her duty to mitigate damages for the period from April 1 through May 30 of 1974, the Respondent may deny her benefits for that period. Of course, benefits not directly related to that period are unaffected. What those benefits may be is not clear. Therefore, we order the Respondent to provide the Board and the Appellant within 15 working days of the date of service of this order a list of all the benefits denied the Appellant together with an explanation of each denial.

Order

It is hereby ordered that the parties respond in accordance with this decision.

Dated 11-15, 1977

STATE PERSONNEL BOARD


James R. Morgan, Chairperson