taken by Farah was not unusual – 'most people selling goods or services depend on the vagaries of demand'; nor was there anything special about the duration of Farah's work. The only matter which could support the exercise of the discretion was the economic failure of the work; but, the AAT said, that failure might have been overcome with persistance or by changing the area in which Farah was selling.

The discretion to recover

The AAT said that, whether recovery was made by court action under s.140(1) or by deduction from any future benefits paid to Farah under s.140(2), there was a discretion which should be exercised having regard to the total circumstances of the case.

In the present case, Farah had told the Tribunal that his family's weekly expenses exceeded its weekly income. This, the AAT said, amounted to 'a case of real hardship':

> 28. In the face of the applicant's hardship and the fact that he was misled, is not in accordance with the principles of administrative justice to attempt to recover any amount overpaid to the applicant for the relevant period. I therefore set aside the decision of the Director-General to recover the unemployment benefit overpaid by resort either to the Act, s.140(1) or s.140(2).

Formal decision

The AAT set aside the decision under review and directed that no action be taken for recovery of the overpayment of unemployment benefit.

DIKMEN and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N83/312)

Decided: 15 June 1984 by C.E. Backhouse.

Berna Dikmen had migrated to Australia in 1972, with a diploma in chemistry. She then worked as a chemical analyst, a cashier, a laboratory assistant and a filing clerk until February 1975.

In March 1975, she was granted unemployment benefits and these continued to be paid to her until March 1982. At that time the Commonwealth Employment Service told the DSS that it could not find employment for Dikmen as a laboratory assistant, which was the only field in which she was prepared to work. On the basis of that report, the DSS decided that Dikmen was no longer eligible for unemployment benefit. She asked the AAT to review that decision.

The legislation

According to s.107(1) of the *Social Security Act* a person is qualified to receive an unemployment benefit if that person satisfies age and residence qualifications and –

> (c) the person satisfies the Director-General that –
>
> (i) throughout the relevant period he was unemployed and was capable of undertaking, and was willing to undertake paid work that, in the opinion of the Director-General was suitable to be undertaken by the person; and
>
> (ii) he had taken, during the relevant period, reasonable steps to obtain such work.

The AAT's assessment

The Tribunal said that it was satisfied on the evidence that Dikmen had 'remained firm at all times in wishing to undertake employment in the area in which she regarded herself as best qualified to work' – that is, as a laboratory assistant:

> I have come to the view that the applicant was not willing to accept employment in a factory or for that matter in any other type of employment other than the area in which she regarded herself [as] skilled and experienced . . . In consequence it could not be said that she was willing to undertake paid work, that in the opinion of the Director-General, was suitable to be undertaken by her. The evidence showed that she had had employment soon after her arrival in Australia as a cashier and as a filing clerk. Although her command of the English language was not fluent, nevertheless she had been able to hold down positions of this type albeit for short periods and in my view it was a type of employment suitable to be undertaken by her. Further I am not satisfied that she has taken during the relevant period reasonable steps to obtain such work.

(Reasons, para. 9)

Formal decision

The AAT affirmed the decision under review.

Unemployment benefit: full-time student

ROWAN and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. S84/21 and S84/53)

Decided: 28 June 1984 by J.O. Ballard.

Andrew Rowan had enrolled as a university student in Perth at the beginning of 1983. In September 1983 his application for unemployment benefits was rejected by the DSS.

At the end of 1983, Rowan moved to Adelaide, and, in January 1984, he again claimed unemployment benefit. The DSS rejected this claim.

Rowan asked the AAT to review both DSS decisions.

The first decision

The AAT noted that, in *Director-General of Social Services* v *Thomson* (1982) 36 ALR 624 the Federal Court had said that a full-time student could qualify for unemployment benefit:

> [T]he activities being pursued by an applicant for a benefit are to be considered with all other relevant factors in determining whether he or she is unemployed. One important matter for consideration is the applicant's intention at the relevant time.

(36 ALR, p. 629)

Rowan had told the AAT that he had enrolled at university to occupy himself after experiencing difficulty in finding a permanent job. He had begun the 1983 year with some savings and was receiving a TEAS allowance. By September 1983 his savings had been exhausted and he applied for unemployment benefits. At the same time he applied for several jobs, which he would have taken if offered.

The AAT said:

> [O]n the applicant's own evidence, he was not looking for work in the first half of the academic year of 1983 and only began to seek employment when his money ran out and he applied for the unemployment benefit. I think there is a reasonable inference from that that he would prefer to remain at the university, and continue with his studies.

(Reasons, para. 13)

The second decision

Rowan told the AAT that he had moved to Adelaide to improve his chances of finding work. He had applied for several jobs. In late February 1983 had had enrolled at the University of Adelaide and continued to receive a TEAS allowance. After a few weeks he was offered a job which he accepted; and he then withdrew from his course.

The Tribunal said that the evidence showed that after his return to Adelaide, Rowan had sought employment and that 'the most compelling evidence' was his withdrawal from University when he found employment.

The Tribunal said that Rowans's receipt of TEAS (available, according to an official leaflet, 'only to a student who is undertaking an approved course on a full-time basis') was not 'sufficient to nullify the other evidence as to [his] intention at the time' (after his move to Adelaide).

Formal decision

The AAT affirmed the first decision and set aside the second decision. It granted Rowan unemployment benefit from the 7th day after his January 1984 claim.

The *Reporter* welcomes contributors discussing current aspects of Social Security law. Contributions should be no more than 1200 words in length, typed double-spaced and may be forwarded to:

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