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RUFUS FLEMING,  
Plaintiff,

CASE NO. 01CV1680

vs.  
CABLE CONSTRUCTORS, INC.  
and  
LABOR AND INDUSTRY REVIEW COMMISSION,  
Defendants.

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**AGENCY DECISION REVERSED**

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This case is before the court on Plaintiff Rufus Fleming's motion to overturn Defendant Labor and Industry Review Commission's (LIRC) decision ordering Fleming to repay \$4,206.00 in unemployment benefits previously received. Fleming argues that the record does not support LIRC's findings. Fleming also argues Defendant Cable Constructors, Inc. (CCI) is barred from challenging Fleming's claim for unemployment benefits under principles of promissory estoppel. Upon review of the record, this court overturns the agency decision.

**FACTS OF THE CASE**

Fleming worked as a lineman for CCI for eleven months. During the course of Fleming's employment, CCI's shop moved from Madison to Sun Prairie. While CCI's shop was in Madison, Fleming worked on a project in Spring Green. Fleming was picked up and dropped off at his residence by CCI personnel because his residence was on the way to the project. In mid-December of 2000, CCI moved their work site from Spring Green to Portage. CCI

personnel no longer picked up or dropped off Fleming since it was no longer convenient. Several times Fleming's supervisor allowed Fleming to take home a company truck because CCI had no way to get Fleming back to his residency. Fleming and his supervisor discussed the possibility of Fleming purchasing a car. When it became clear that Fleming was not going to purchase a vehicle, the supervisor told Fleming since it was likely he couldn't get to and from work he might qualify to collect unemployment benefits.

Plaintiff was sick during the latter part of the last week that he worked. Plaintiff's supervisor, Paul Dyrdaahl, dropped off plaintiff's check at plaintiff's home but avoided contact with plaintiff because he didn't want to catch plaintiff's cold. The supervisor gave the check to plaintiff's fiance along with a note which read as follows:

Rufus I've talked with CCI, you'll be able to receive unemployment, without them contesting your situation. If you don't care for, the way, I've describe your situation, let me know!!

When you called and thanked me for dropp'n your check off. You should have told me, you had concerns to discuss.., as far as your stay on its 100 percent up to you. But no show tomorrow, I'll assume you're going to take unemployment,

Good luck Paul

The unambiguous, unequivocal interpretation of that note can only be as follows. The supervisor, having spoken with the employer, had the authority to offer plaintiff two choices. One was a layoff and the other was to continue working without the assistance of the employer's truck for transportation to and from work.

Fleming never returned to work for CCI, and applied for unemployment. Fleming listed he had been laid off as his reason for claiming unemployment benefits. The employer filed an UCB-16 Separation Notice form, in which CCI indicated Fleming had quit due to transportation

problems. The Separation Notice also notes a slow down in forward production. CCI contested Fleming's application for unemployment benefits. LIRC completed an investigation on the matter. During the investigation, Fleming told LIRC he did not have a ride to the Sun Prairie shop so he could not work. He also stated CCI had told him it would have work for him in Madison soon. LIRC determined Fleming quit because of transportation problems.

### DECISION

The only reasonable inference from the note given to plaintiff by his supervisor is that the employer was sympathetic to the employee's transportation problem. While it would not continue to permit the employee to use a work truck for personal transportation, it recognized his dilemma and offered a layoff if the employee so chose that resolution of the situation. The note constituted an offer of a voluntary layoff. Plaintiff opted for the voluntary layoff. He accepted the offer made by CCI and applied for unemployment benefits. CCI then reneged on the offer and contested his eligibility for unemployment. Those facts support the finding that Fleming accepted a voluntary layoff.

The conclusion by LIRC that plaintiff voluntarily terminated his employment is not supported in the record. If the record contains no substantial and credible evidence which supports LIRC's determination, the agency determination is unreasonable and should be reversed. Begel v. LIRC, 246 Wis. 2d 345, 363 N.W.2d (Ct. App. 2001).

Fleming also argues CCI is barred from challenging his claim under the principle of promissory estoppel. This court agrees that Fleming fulfills all the requirements for promissory estoppel as established in Hoffman v. Red Owl Stores, Inc., 26 Wis. 2d 683, 698 (1965). See also Mckenzie v. Miller Brewing Co., 241 Wis. 2d 700, 722, 723, 623 N.W.2d 739 (2001).

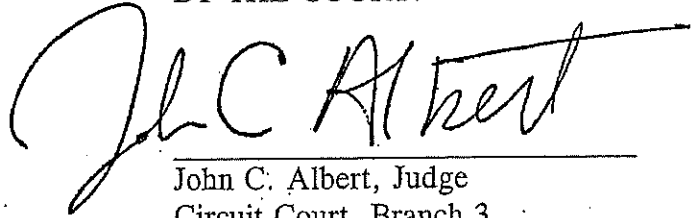
Justice can be avoided here by enforcement of the accepted offer. Requiring plaintiff to repay thousands of dollars based solely on the employer's reversal of its previous position would be unjust.

For the foregoing reasons, the determination of LIRC is reversed and the case remanded for proceedings consistent with this opinion.

**So Ordered.**

Dated this 17 day of January, 2002.

BY THE COURT:

A handwritten signature in black ink, reading "John C. Albert". The signature is written in a cursive style with a long horizontal stroke extending to the right from the end of the name.

John C. Albert, Judge  
Circuit Court, Branch 3

cc: Attorney Kraig A. Byron  
Cable Constructors, Inc.  
Attorney Earl G. Buehler