IN THE SUPREME COURT OF GUAM

ALAN HAEUSER,
Petitioner-Appellant

vs.

DEPARTMENT OF LAW, GOVERNMENT OF GUAM, and the CIVIL SERVICE COMMISSION OF GUAM
Respondents-Appellees

OPINION

Supreme Court Case No.:CVA00-21
Superior Court Case No.:SP0003-92

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Appeal from the Superior Court of Guam
Argued and submitted on Dec. 4, 2001
Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, JR., Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; MICHAEL J. BORDALLO, Justice *Pro Tempore*.

CARBULLIDO, J.:

[1] This case originated from Petitioner-Appellant Alan Haeuser's (hereinafter "Haeuser") termination from the Guam Department of Law (hereinafter "DOL") and is before us for the second time on appeal. The first appeal resulted in a published opinion by this court, *Haeuser v. Department of Law, Government of Guam and the Civil Service Commission of Guam*, 1999 Guam 12, (hereinafter "*Haeuser I*"), wherein we reversed the trial court's finding that Haeuser reasonably mitigated his damages and affirmed the trial court's denial of the Government's trial motion to compel the production of Haeuser's tax returns. The gravaman of this second appeal is the trial court's application on remand of the *Haeuser I* Mandate (hereinafter "Mandate") with respect to the issue of whether Haeuser was entitled to an award of back pay. We affirm the trial court's denial of back pay award to Haeuser based on the Mandate.

I.

[2] Haeuser was hired as an Assistant Attorney General, an unclassified position, with DOL on February 1990 for a probationary term of two years. On April 1, 1991, DOL terminated Haeuser from employment. Haeuser filed an appeal with the Civil Service Commission of Guam (hereinafter "Commission"). The Commission dismissed the appeal for lack of jurisdiction on the ground that Haeuser was an unclassified employee under Title 4 GCA § 6208.1.[1]

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[1] Title 4 GCA § 6208.1 provides:

> Not-withstanding any other provision of law, the Attorney General may hire Assistant Attorneys General necessary for the operation of the department. Attorneys shall be hired for an initial two-year probationary

[3] Shortly thereafter, Haeuser petitioned for a writ of mandate from the Superior Court of Guam, alleging that 4 GCA § 6208.1 violated the Equal Protection Clause and the Organic Act. After hearing the matter, the Superior Court found no equal protection violation, but did not explicitly address the Organic Act violation. Haeuser appealed the ruling to the Appellate Division of the District Court, which affirmed the Superior Court findings and held that there was no violation of the Organic Act.

[4] Haeuser filed an appeal to the Ninth Circuit challenging only the Appellate Divisions' findings with respect to the Organic Act violation. The Ninth Circuit agreed with Haeuser and held that the statute exempting Assistant Attorneys General from the merit protections of classified service violated the Organic Act. The Ninth Circuit issued its mandate to the Appellate Division, which in turn issued a mandate to the Superior Court.

[5] Upon remand to the Superior Court, Haeuser filed a Motion for Summary Judgment. The trial court granted the Motion and ordered the Government to reinstate Haeuser as an Assistant Attorney General. Haeuser returned to work for DOL on June 24, 1997, and is currently a full-time classified employee.

[6] A trial was held in early October 1997 regarding the issues of back pay and mitigation. The Superior Court awarded back pay to Haeuser, with a setoff for money earned and for failure to mitigate. The Government filed a Motion to make additional findings of fact and conclusions of

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> period in the unclassified service, which shall by the term of the appointment expire two years from the date of the appointment if not sooner terminated by the appointing authority. Attorneys reappointed after completion of their probationary period shall be employed in the unclassified service as provided under Section 4102(16) of Chapter 4 of this Title and may be removed only for cause. Attorneys presently in the classified service shall remain classified.

Title 4 GCA § 6208.1 (1998).

law, which was subsequently denied by the trial court. The Government also filed a Motion to compel production of Haeuser's tax returns, which was similarly denied by the trial court. Consequently, the Government appealed the award of back pay and the denial of the Government's Motion to compel production of documents.

[7] In *Haeuser I*, this court reversed the trial court's finding that Haeuser had reasonably mitigated his damages and affirmed the trial court's denial of the Government's Motion to compel the production of Haeuser's tax returns. A Mandate pursuant to *Haeuser I* was filed on June 10, 1999 and provided in pertinent part:

> ON CONSIDERATION THEREOF, it is now hereby ordered and adjudged by this court that the trial court's finding that Haeuser had reasonably mitigated his damages, is **REVERSED** and **REMANDED** for findings consistent with this opinion.

[8] The trial court issued a Decision and Order on April 27, 2000 in accordance with the Mandate. In that Decision and Order, the trial court expressed concerns in ascertaining the precise meaning of the Mandate as reflected in the following:

> After having reviewed the high Court's Opinion in this regard several times, this Court *remains somewhat uncertain* of the meaning of the Supreme Court's mandate, and further is uncertain as how, exactly, to proceed in this matter. (emphasis added)

Despite such concerns, the trial court reversed its prior award of back pay to Haeuser. In its analysis, the trial court reduced Haeuser's back pay damage to reflect the periods within which he did not reasonably mitigate his damages. Applying the analysis in *Haeuser I*, wherein this court found that Haeuser did not reasonably mitigate his damages because he failed to apply for any job in the private sector, the trial court examined each of the six years that Haeuser was unlawfully terminated from his job. Because it did not find that Haeuser applied for a private sector job in any of those six years, the trial court determined that Haeuser failed to mitigate his damages in each of

those years; and thus was not entitled to any back pay.

[9] On May 10, 2000, Haeuser then filed a Motion for a New Trial in Superior Court, which was denied on July 31, 2000. Haeuser filed a timely notice of appeal with this court on August 30, 2000, appealing both the Superior Court's denial of a new trial and the underlying judgment. This second appeal focuses on the trial court's reversal of its prior award of back pay to Haeuser in light of this court's Mandate.

II.

[10] We have jurisdiction over this appeal from a final judgment pursuant to Title 7 GCA §§ 3107 and 3108 (1994). We review actions taken by a trial court on remand from an appeal for an abuse of discretion. *See In re Marriage of Blinderman*, 669 N.E.2d 687, 694 (Ill. App. Ct. 1996); *see also R.J.M. v. State Dep't. of Soc. Servs.*, 973 P.2d 79, 86 (Alaska 1999). *But see Slattery v. Covey & Co.,* 909 P.2d 925, 926 (Utah Ct. App. 1995) (actions taken by a trial court on remand is reviewed *de novo*).

III.

[11] Haeuser's main contention in this appeal is that "the trial court erred in perfunctorily denying [him] an award of back pay for the years following his unlawful discharge from the Department of Law." Appellant's Opening Brief, p. 6. To support his contention, Haeuser employs a two-prong, procedural and substantive, attack on the trial court's Decision and Order. Accordingly, we address the arguments presented by the parties in our resolution of the following two issues: (1) whether the trial court erred in the manner it interpreted the Mandate; and (2) whether the trial court erred in not

awarding Haeuser back pay in light of the Mandate.

A. Procedural Attack

[12] The first issue we address is whether the trial court erred in the manner it interpreted this court's Mandate. Haeuser argues that the trial court committed the following two errors in its interpretation of the Mandate: first, by treating the Mandate as an order to enter judgment against him; and second, by not construing the Mandate as an order for "further proceedings" and thereby failing to conduct an independent analysis of all the trial record before reaching its conclusion. We disagree with Haeuser on both points of error.

1. An Order to Enter Judgment

[13] The first procedural challenge that Haeuser raises is that the trial court erred when it read the Mandate as a decree to enter a judgment for the Government. After conducting an examination of the trial court's decision and order, we readily dispose of this first challenge. Contrary to Haeuser's claim, the trial court did not interpret the Mandate as a decree prohibiting Haeuser from receiving back pay. Rather, the trial court acknowledged that because the Mandate did not expressly order that Haeuser was entitled to back pay award, it was faced with the task of determining, "whether the Petitioner is entitled to a back pay award that is reduced based upon his failure to mitigate his damages, or whether the Petitioner is simply not entitled to any award of back pay in this matter." Appellant's Excerpts of Record, Tab 6, p. 5 (Decision and Order, April 27, 2000). Although the court ultimately found that Haeuser "[was] not entitled to any award of back pay, based upon his failure to mitigate damages," Appellant's Excerpts of Record, tab 6, p. 13 (Decision and Order, April 27, 2000), the trial court unambiguously explained in its decision that it reached this conclusion only after "having considered the findings set forth by the Supreme Court, and after

having considered authorities on the effect of the failure to mitigate damages on a back pay award." Appellant's Excerpts of Record, tab 6, p. 4 (Decision and Order, April 27, 2000). Thus, the trial court did not treat the Mandate as an order to enter judgment.

2. Further Proceedings

[14] The second procedural attack that Haeuser raises is that the Mandate, specifically the portion which reads, "REMANDED for findings consistent with this opinion," required the trial court to conduct further proceedings.[2] Although we are cognizant of *Haeuser I*'s failure to clearly articulate what "REMANDED for findings consistent with this opinion" meant in the context of determining whether Haeuser was entitled to any back pay award, we are nonetheless unpersuaded by Haeuser's argument that the trial court erred when it did not conduct further proceedings to the extent sought by Haeuser.[3]

[15] The inclusion of the "REMANDED for findings consistent with this opinion" clause in the Mandate did not obligate the trial court to conduct further proceedings. The Mandate clearly stated "further findings" and not "further proceedings." We are unaided by Haeuser's citation to cases, which required the trial court to conduct "further proceedings," primarily because in those cited cases, the mandates clearly denoted "further proceedings" and not "findings." *Atchison, T. & S. F.*

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[2] We note that although Haeuser maintains that the trial court erred in not conducting further proceedings, Haeuser fails to denote exactly which issue the trial court failed to further explore, the issue of mitigation or the issue of back pay. Because the law of the case doctrine precludes Haeuser from relitigating the mitigation issue, *In re Sanford Fork & Tool Co.,* 160 U.S. 247, 259, 16 S. Ct. 291, 294 (1895); *GHURA v. Pac. Superior Enters. Corp.*, 2001 Guam 8, ¶ 14; *People v. Hualde*, 1999 Guam 3, ¶ 13, we assume that Haeuser is asserting that the trial court should have conducted further proceedings with respect to the back pay issue.

[3] Haeuser asserts that the trial court committed error by not conducting "further proceedings." The "further proceedings" that Haeuser is apparently alluding to is the trial court's failure "to make an independent analysis of the entire trial record in light of the issues decided in [*Haeuser I*] . . . ." Appellant's Opening Brief, p. 10. Assuming *arguendo* that we were to accept Haeuser's assertion, Haeuser fails to point out any evidence in the record that the trial court should have evaluated, but overlooked.

Ry. Co. v. Superior Court, 86 P. 2d. 85, 87, 12 Cal. 2d 549, 553, (1939) (mandate providing that, "Judgment reversed, and cause remanded for further proceedings not inconsistent with this opinion.")[4]; *District of Columbia v. McBlair*, 124 U.S. 320, 330, 8 S. Ct. 547, 552 (1888) (mandate providing that, "The decree in question reversed the decree of the special term of August 7, 1875, and remanded the cause to the special term to be further proceeded with as the parties might be advised."). Moreover, we are unable to accept Haeuser's sweeping proposition that "findings" and "further proceedings" are interchangeable and should be accorded the same effect, in view of his failure to cite to any caselaw, which supports such a nexus.

[16] Additionally, even if we were to accept Haeuser's premise that "further findings" and "further proceedings" are analogous, we are not constrained to find that the trial court erred in its treatment of the case. We follow the rationale of the court in *Brown v. Whitaker*, 926 S.W.2d 1 (Mo. Ct. App. 1996), which expressed that, "[w]hen a case is remanded for further proceedings consistent with this opinion such an order is a simple reversal and remand because every remanded case is remanded for further proceedings in accordance with the appellate court opinion." *Brown*, 926 S.W.2d at 4 (citations and internal quotations omitted). "'[P]roceeding' simply means further judicial action; it does not necessarily mean an evidentiary hearing." *Id.* In essence, even if the Mandate were to be interpreted as an order for "further proceedings," the trial court was only required to take judicial action in accordance with this court's opinion. As the following paragraphs reflect, the trial court proceeded in accordance with the Mandate.

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[4] In his brief, Haeuser misstates the Mandate in this case by noting it as "*findings* not inconsistent with this opinion," Appellant's Opening Brief, p. 9 (emphasis added), rather than "Judgment reversed, and cause remanded for further *proceedings* not inconsistent with this opinion." *Atchison,* 86 P.2d. at 87, 12 Cal. 2d at 553 (emphasis added).

[17] In resolving whether the trial court correctly proceeded on remand and complied with the Mandate, the *Slattery v. Covey & Co.,* 909 P.2d 925 (Utah Ct. App. 1995), case is instructive. In *Slattery*, the appellate court held "that the trial court acted beyond the scope of its authority on remand by accepting evidence anew" on an issue that was previously addressed during the first appeal. *Slattery*, 909 P.2d at 928. The court expressed that "the lower court must implement both the letter and the spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces." *Id.* (quoting *Thurston v. Box Elder County*, 892 P.2d 1034, 1037-38 (Utah 1995)). The *Slattery* court further explained that, "it is only when issues are left open by an appellate decision that the trial court has discretion to deal with those issues as it sees fit, *including allowing supplemental filings or proceedings*." *Id.* (emphasis added). Furthermore, in determining whether an issue has been left open in a prior decision, both the mandate and opinion should be examined. *See McDonough v. Liberty Mut. Ins. Co.,* 968 S.W.2d 771, 773 (Mo. Ct. App. 1998) (finding that in construing the mandate, the opinion of the reviewing court "is part of the mandate and must be used to interpret the mandate itself."); *see also Sanford*, 160 U.S. at 256, 16 S. Ct. at 293 ("[O]pinion delivered by . . . [the] court at the time of rendering its decree may be consulted to ascertain what was intended by its mandate . . . ."); *McWhorter v. McWhorter*, 716 So. 2d 720, 722 (Ala Civ. App. 1998) ("When the mandate of the appellate court is not clear, the court's opinion should be consulted.") (citations omitted).

[18] In the case at bar, we acknowledge that *Haeuser I* did not expressly hold that Haeuser was not entitled to back pay award. However, after examining the Mandate in conjunction with the opinion, we find that the back pay award issue was disposed of by implication. *See Poletti v. C.I.R.*, 351 F.2d 345, 349 (8th Cir. 1965). In *Haeuser I*, this court addressed the mitigation issue by first

setting forth the overarching principle that, "[i]t is well settled that any injured party, who is entitled to damages, is required to mitigate those damages." *Haeuser I*, 1999 Guam 12 at ¶ 11. *Haeuser I* then ultimately held that the trial court incorrectly found that Haeuser reasonably mitigated his damages. *Id*. at ¶ 22. Bearing in mind the overarching principle initially set forth by this court, it would then be a fair implication of the *Haeuser I* opinion that Haeuser was not entitled to damages because he did not reasonably mitigate his damages.

[19] The *implication* reasoning we employ today is not a novel approach and can be found in the *Poletti v. C.I.R.*, 351 F.2d 345 (8th Cir. 1965), case cited by Haeuser. In *Poletti*, the court acknowledged its failure in a prior opinion to "expressly [hold] that there was no substance in petitioners' first contention." *Poletti*, 351 F.2d at 349. The court went on to state, however, that "a rational consideration of our prior opinion, in its entirety, convincingly demonstrates that the issue was necessarily disposed of by implication . . . . Petitioners are not entitled to secure another adjudication upon any issue which was 'expressly or impliedly disposed of' on the first appeal." *Id.*; *Aardvark Art, Inc. v. Lehigh/Steck-Warlick, Inc.*, 672 N.E.2d 1271, 1276 (Ill. App. Ct. 1996) (quoting *Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.,* 810 F.2d 243, 250 (D.C. Cir. 1987)) ("The [law of the case] doctrine encompasses a court's explicit decisions, as well as those issues decided by necessary implication."); *Slattery*, 909 P.2d at 928 (stating that "appellate review is not intended to grant litigants a second chance to present their case when they have had a full and fair opportunity to do so at an earlier trial."). Because the *Haeuser I* court disposed of the mitigation issue, the trial court was not required to review the record with respect to the issue. Accordingly, we find that the trial court did not commit any procedural errors on remand.

B. Substantive Attack

[20] The next issue we address is whether the trial court erred in denying Haeuser back pay in light of this court's Mandate. Haeuser asserts that "the complete trial record supports a judgment for [him] under the law of this case."[5] He further contends that even though *Haeuser I* found that he did not reasonably mitigate his damages and adopted a new burden of proof standard, he is still entitled to an award of back pay because the trial court failed to consider evidence that he would not have been hired by a private firm even if he applied at one. As the following discussion reflects, we are unpersuaded by Haeuser's arguments.

[21] We begin our discussion by noting Haeuser's misapplication of the law of the case doctrine. At first blush it appears that Haeuser is applying the law of the case doctrine to prove that the trial court erred in denying him any back pay award; however, a close examination of Haeuser's discussion in this section reveals that Haeuser is instead rehabilitating the issue of mitigation, which was previously disposed of in *Haeuser I*. Consequently, this issue should have been raised in a petition for rehearing of the *Haeuser I* opinion and not in this present appeal. As *English v. Olympic Auditorium*, 52 P.2d 267, 10 Cal. App. 2d 196 (Ct. App. 1935) elucidated:

> If a court of review inadvertently omits to include in its instructions to a trial court upon the reversal of a judgment essential elements within the issues necessarily determined on the appeal, the aggrieved party has his remedy in a petition for rehearing. A trial court may not exceed the specific directions of a court of review in remanding a cause after a reversal of the judgment on appeal and add thereto conditions which it assumes the reviewing court should have included.

English, 52 P.2d at 269, 10 Cal. App. 2d at 201.

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[5] It appears that this issue is the focal point of Haeuser's appeal, as reflected from his in depth discussion of this issue in pages twelve through twenty-five of his brief.

[22] Having noted Haeuser's misapplication of the law of the case doctrine, we next address how the doctrine supports the trial court's finding that Haeuser was not entitled to any back pay award.[6] Under the law of the case doctrine, "a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *GHURA*, 2001 Guam 8 at ¶ 14 (citing *Hualde*, 1999 Guam 3 at ¶ 13). This principle is also reflected in *In re Sanford Fork & Tool Co.,* 160 U.S. 247, 16 S. Ct. 291 (1895), which provides:

> When a case has been once decided by this court on appeal, and remanded to the circuit court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The circuit court is bound by the decree as the law of the case, and must carry it into execution according to the mandate. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.

Id., 160 U.S. at 255, 16 S. Ct. at 293. "The doctrine is not a limitation on a tribunal's power but rather a guide to its discretion." *GHURA*, 2001 Guam 8 at ¶ 14 (citing to *Hualde*, 1999 Guam 3 at ¶ 13). In addition, the doctrine promotes the "public policy against reopening matters which have been decided." *United Fire & Cas. Co. v. Iowa Dist. Court*, 612 N.W.2d 101, 103 (Iowa 2000) (citing *Wolfe v. Graether*, 389 N.W.2d 643, 651 (Iowa 1986)).

[23] Here, both parties agree that *Haeuser I* held that the trial court erred when it concluded that Haeuser reasonably mitigated his damages. It is also undisputed that *Haeuser I* adopted a new burden of proof standard with respect to mitigation of damages and in accordance with the new standard, the Government met its burden in proving that Haeuser did not reasonably mitigate his damages because he failed to apply to any private law firms. The thrust of the dispute, however,

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[6] We reemphasize our previous analysis, which illustrated how the issue of back pay was impliedly disposed of in *Haeuser I*.

emanates from Haeuser's claim that the analysis does not end with proving that he did not mitigate his damages. Without support from case law, Haeuser maintains that the next step in the analysis should be to consider evidence that would illustrate that he would not have been hired by a private firm even if he had applied. We disagree.

[24] In determining whether Haeuser was entitled to any back pay, the trial court set out the general rule that "a party entitled to recover back pay to a wrongful termination from employment must undertake to mitigate his or her damages during the period of unemployment." Appellant's Excerpts of Record, Tab 6, page 4 (Decision and Order, April 27, 2000). It further noted that although an employee is not entitled to back pay if he or she failed to mitigate, courts have allowed the award of back pay for those periods that the employee did mitigate. Appellant's Excerpts of Record, Tab 6, p. 5 (Decision and Order, April 27, 2000); s*ee also Dyer v. Workers Com. Bd.*, 28 Cal. Rptr. 2d 30, 36 (1994) (stating that "[a]n employee is required to mitigate damages and a failure to mitigate may preclude an award and in any event an award for lost wages must be reduced by such sums as the employee earned or might reasonably have earned during the relevant period.") (citations and internal quotations omitted). In calculating the amount of back pay that Haeuser was entitled to, the trial court applied the *Haeuser I* finding that Haeuser did not reasonably mitigate his damages based on his failure to apply to any private firm. Focusing on this court's reliance on Exhibit O,[7] the trial court reviewed Haeuser's unemployment period on a year-by-year basis, ascertaining whether there was a year wherein Haeuser applied to a private law firm. When it

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[7] Exhibit O is a thirteen-page table listing the names of attorneys from the Superior Court of Guam Directory and delineating the type of work each attorney engaged in from years 1990 to 1996 (excluding year 1992). The Exhibit also summarized how many attorneys entered private practice during 1991 through 1996 (excluding 1992) and how many of those new private practioners were formerly government attorneys. Appellee's Supplemental Excerpt's of Record, Tab. B, pp. 1-13 (Exhibit O).

determined that Haeuser did not apply to a firm in any of those years, the trial court correctly found that Haeuser was not entitled to any back pay.

[25] With regard to Haeuser's claim that the trial court should have looked beyond Exhibit O and considered evidence that would have proven that he would not have been hired by a private law firm even if he had applied to one, the Government's Brief correctly points out that the trial court would have erred if it had reconsidered such evidence. Appellee's Reply Brief, page 8. In *Haeuser I,* this court did consider such evidence when it analyzed the trial court's previous "common sense approach" in determining Haeuser's chances in obtaining a job in a private law firm. *Haeuser I,* 1999 Guam 12 at ¶ 21. This court, however, was not persuaded by the evidence in view of Haeuser's failure to apply to at least one private firm. *Id.* If the trial court reconsidered such evidence and reached a different conclusion on remand, it would have, in effect, violated the previous finding by this court and rendered a decision inconsistent with *Haeuser I. See Palm Rest. of Georgia, Inc. v. Prakas*, 383 S.E.2d 584, 585-86 (Ga. Ct. App. 1989) (stating that, "the decision of the appellate court, and any direction awarded, shall be respected and in good faith carried into full effect by the court below.") (citations and internal quotations omitted); *see also Odima v. Westin Tucson Hotel*, 53 F.3d 1484, 1495 (9th Cir. 1995) (When a case has been decided by an appellate court and remanded, the court to which it is remanded must proceed in accordance with the mandate and such law of the case as was established by the appellate court.) (citing *Firth v. United States,* 554 F.2d 990, 993 (9th Cir. 1977)); *Snoffer v. City of Los Angeles,* 58 P.2d 961, 14 Cal. App. 2d 650, 653 (Ct. App. 1936). In essence, when the law of the case doctrine is applied to this case, Haeuser's claim that the trial court erred when it reversed his award of back pay fails.

III.

[26] Because we find no procedural and substantive errors in the trial court's application of the Mandate, we hold that trial court did not abuse its discretion in finding that Haeuser was not entitled to any back pay award. We hold that the trial court did not err in denying Haeuser's Motion for a new trial. Accordingly, the judgment of the trial court is **AFFIRMED**.