Michigan Law Review

Volume 48 | Issue 6

1950

LABOR LAW-VETERAN'S REEMPLOYMENT RIGHTS-DURATION OF SENIORITY BEYOND ONE YEAR PERIOD

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LABOR LAW—VETERAN'S REEMPLOYMENT RIGHTS—DURATION OF SENIORITY BEYOND ONE YEAR PERIOD—At the time of his induction into the Armed Forces, plaintiff was employed as a locomotive machinist at defendant's Loyall shop. This shop was transferred to Corbin during his absence, and, upon discharge from military service, plaintiff was reemployed there with seniority from July 17, 1946, the date of his return. In April, 1947, plaintiff filed his complaint under section 8, Selective Training and Service Act,[1] alleging that had he not been in the Armed Forces he would have been transferred to the Corbin shop with seniority from July 1, 1945. The collective bargaining agent of the machinist employees of the defendant intervened and later moved to dismiss on the ground that more than one year had then elapsed since plaintiff was reemployed. In a second case in which intervening defendants also moved for dismissal, the veteran did not file his complaint until nearly three months after the expiration of his first year of reemployment. The district court dismissed both actions and the court of appeals affirmed.[2] On appeal, *held*, reversed and remanded. The seniority status secured by the act continues beyond the first year of reemployment subject to the advantages and limitations applicable to other employees. *Oakley v. Louisville & Nashville R. Co.*, (U.S. 1949) 70 S.Ct. 119.

The reemployment provisions of the Selective Training and Service Act have been a fruitful source of litigation.[3] In §8(c) it is provided that a veteran who meets the requirements for reemployment "shall be considered as having been on furlough . . . shall be so restored without loss of seniority . . . and shall not be discharged from such position without cause within one year. . . ."[4] Seniority does

[1] 54 Stat. L. 890 (1940), 60 Stat. L. 341 (1946), 50 U.S.C.A. App. (1944) §308.

[2] Oakley v. Louisville & N. Ry. Co., (6th Cir. 1948) 170 F. (2d) 1008; Haynes v. Southern Railway System, (6th Cir. 1948) 171 F. (2d) 128.

[3] For a collection of cases see Freed, "The Reemployment Provisions of the Selective Service Act," 5 WASH. AND LEE L. REV. 48 (1948).

[4] Supra, note 1.

not inhere in the employer-employee relationship.[5] In private employment it is created almost exclusively by collective bargaining agreements in unionized industry and is subject to change by superseding agreements.[6] If the statutory seniority rights of a veteran had fitted into the framework of the seniority system,[7] their duration would have been of no particular import. Unfortunately, a veteran's statutory rights have often conflicted with the seniority given him by a collective bargaining agreement made subsequent to his departure for military service.[8] The duration of the guaranteed seniority, then, has taken on major importance. The decision in the principal case clearly seems to be correct. The wording of the statute does not require that the guarantee against loss of seniority, like the guarantee against discharge without cause, should automatically terminate after one year of reemployment. It is to be noted, however, that the Court was careful to point out that the case was considered on the basis of the complaint and the motion to dismiss only,[9] and that, while the door is not opened to discrimination against him, as a veteran, at the end of the year, he is subject to the advantages and limitations applicable to the other employees.[10] Thus, in answering the question expressly left open in the *Trailmobile*[11] decision, the Court has not vitiated the holding in that case. There, the seniority of a returned veteran was reduced by non-discriminatory collective bargaining fourteen months after he had returned to his position. The Court held that so much of the statutory protection as would give a veteran preference over a non-veteran with identical seniority rights at the time of reemployment ends with the first year.[12] Clearly, the veteran should not be indefinitely immunized against the usual processes of collective bargaining. The decision in the principal case merely protects the veteran against loss of service-accumulated seniority through anti-veteran discrimination after the expiration of the first year of reemployment, and permits him to test his reemployment seniority after that year. If the veteran lost seniority because he was in the service, he should be entitled to a restoration.

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[5] Ryan v. New York Central Railroad Co., 267 Mich. 202 at 208, 255 N.W. 365 (1934); Casey v. Brotherhood of Locomotive Firemen and Enginemen, 197 Minn. 189 at 191, 266 N.W. 737 (1936).

[6] Comment, 47 YALE L. J. 73 at 74 (1937); Christenson, "Seniority Rights Under Labor Union Working Agreements," 11 TEMPLE L.Q. 355 at 371 (1937).

[7] "What it [Congress] undertook to do was to give the veteran protection within the framework of the seniority system plus a guarantee against demotion or termination of the employment relationship without cause for a year." Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275 at 288, 66 S.Ct. 1105 (1946).

[8] The Supreme Court has recently held that a non-discriminatory bargaining contract, made during the veteran's absence, which gives preferred seniority to a non-veteran union official with less shop seniority, does not infringe upon the veteran's statutory rights. Aeronautical Industrial District Lodge 727 v. Campbell, 337 U.S. 521, 69 S.Ct. 1287 (1949). For a discussion of the conflicting results in the third and in the ninth circuits prior to this decision see Barker, "Current Problems of Veterans' Seniority," 37 GEO. L.J. 585 at 588 (1949).

[9] Principal case at 120, note 2.

[10] Principal case at 122.

[11] Trailmobile Co. v. Whirls, 331 U.S. 40 at 60, 67 S.Ct. 982 (1947).

[12] Id. at 60.