

LAW REVIEW 737

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CATEGORY: USERRA—Enforcement
Right to Trial by Jury under USERRA

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Maheer v. City of Chicago, 2006 U.S. Dist. LEXIS 87508 (N.D. Ill. Nov. 21, 2006).

Jerome Maher, a Navy Reservist, sued the City of Chicago, his employer, alleging violations of the Veterans' Reemployment Rights (VRR) law, formerly codified at 38 U.S.C. 2021-2026, and the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301-4334. As I explained in [Law Review 104](#), Congress enacted USERRA in 1994 as a complete recodification of the VRR law, which can be traced back to 1940. The effective date of USERRA is Dec. 12, 1994. Mr. Maher filed suit under the VRR law, as well as USERRA, because some of the employer actions about which he complained occurred prior to USERRA's effective date.

The City of Chicago demanded a trial by jury, but later withdrew the demand and moved to strike the plaintiff's jury trial demand. In this decision, Magistrate Judge Jeffrey Cole denied the city's motion to strike and held that the plaintiff is entitled to a trial by jury for his USERRA claim.

The Seventh Amendment to the U.S. Constitution, part of the Bill of Rights, provides that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved." It has been held that there is no right to trial by jury under the VRR law because a VRR case is brought on the "equity" side of the court, not the "law" side, and that a VRR case is not a suit at common law. See *Troy v. Hampton*, 756 F.2d 1000, 1003 (4th Cir. *en banc*), *cert. denied sub nom. Blackmon v. Observer Transportation Co.*, 474 U.S. 864 (1985).

Judge Cole pointed out in his well-written opinion that section 4323(d)(1)(C) of USERRA [38 U.S.C. 4323(d)(1)(C)] provides for the court to award liquidated damages in the amount of the actual damages (thus, to double the damages) in case of willful violations. In Judge Cole's view, and in the view of other courts that have considered this issue, the addition of the liquidated damages remedy transforms the nature of a reemployment rights case from an equity case to a case at law, and therefore the right to trial by jury applies. See also *Nino v. Haynes International Inc.*, 2005 U.S. Dist. LEXIS 43971 (S.D. Indiana Aug. 19, 2005).

Employers generally fear juries in USERRA cases, especially during the Global War on Terrorism. Public opinion is sharply split on the wisdom of the war but, unlike during the Vietnam War, the public strongly supports the troops. In *McLaughlin v. Newark Paperboard Co.*, discussed in detail in [Law Review 0707](#), the defendant employer settled quickly after the judge ruled that the plaintiff (widow of a National Guard lieutenant colonel killed in action after being fired by the defendant employer) was entitled to a jury trial.

Yes, USERRA does have teeth, and the right to a trial by a jury of community members is one of the sharper ones.