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Sixth Supreme Court Case on Reemployment Statute *Diehl v. Lehigh Valley Railroad Co.*, 348 U.S. 960 (1955)

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1.3.2.2—Continuous Accumulation of Seniority—Escalator Principal

10.1—Supreme Court Case on Reemployment

On June 24, 1942, Mr. Diehl (first name not provided in the opinion) went to work for the Lehigh Valley Railroad Co. as a “car-man helper.” He was promoted to “temporary car-man mechanic” on Feb. 19, 1943. He entered active duty on April 15, 1943, and was honorably discharged on Oct. 20, 1945. On Nov. 11, 1945 (Veterans Day), he returned to work for the railroad as a temporary car-man mechanic.

On Aug. 29, 1944, while Mr. Diehl was on active duty, the railroad and Mr. Diehl’s union entered into an agreement which provided that the seniority status of car-man helpers promoted to temporary car-man mechanics would be determined by the union and the railroad at the expiration of the war emergency. On March 1, 1949, the union and the railroad entered

¹I invite the reader’s attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans’ Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

into a supplemental contract which provided, in pertinent part, as follows: "A car-man helper, who has qualified as a car-man mechanic ... and is presently working on position of a temporary car-man mechanic on the effective date of this agreement, shall be given the opportunity to make an election within 15 days after the date of his being notified of having worked 1,160 days as a temporary car-man mechanic to be placed on the permanent car-man mechanics' roster with seniority date as of the effective date of this agreement in the order with other men in which he completed 1,160 days' experience."

Mr. Diehl would have completed 1,160 days' experience on June 1, 1946, if his career at the railroad had not been interrupted by war service. He actually completed the 1,160 days' experience on Jan. 10, 1949. In accordance with the supplemental agreement, Mr. Diehl was placed on the car-man mechanics' seniority roster behind four non-veterans who completed their 1,160 days' experience threshold between June 1, 1946 (when Mr. Diehl would have completed his threshold but for his service) and Jan. 10, 1949 (when Mr. Diehl in fact completed the 1,160 days of experience).

On Nov. 28, 1951, Mr. Diehl filed suit against the railroad, the union, and the four non-veteran employees who were ahead of Mr. Diehl on the seniority roster because of Mr. Diehl's military service. He sought to have his seniority date as a car-man mechanic backdated to June 1, 1946, when he would have met the 1,160-day threshold but for his military service. In an unreported decision, the District Court denied Mr. Diehl any relief. The Court of Appeals affirmed. *Diehl v. Lehigh Valley Railroad Co.*, 211 F.2d 95 (3rd Cir. 1954).

In a highly unusual development, the Supreme Court granted *certiorari* and reversed the Court of Appeals in a one-sentence *per curiam* order: "Upon the facts disclosed in the opinion of the Court of Appeals for the Third Circuit, 211 F.2d 95, the applicable Acts of Congress, and the opinion of this Court in *Oakley v. Louisville & Nashville R. Co.*, the judgment of the Court of Appeals is reversed." *Diehl v. Lehigh Valley Railroad Co.*, 348 U.S. 960 (1955).

In reversing the Court of Appeals, the Supreme Court reaffirmed the escalator principle first enunciated in *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946). Upon returning from military service, Mr. Diehl was required to complete the 1,160-day work requirement as a temporary car-man mechanic. When he successfully completed that requirement, he was entitled to have his seniority date as a permanent car-man mechanic backdated to the date that he would have met the 1,160-day threshold but for the military interruption.

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