

LAW REVIEW 846

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10-Supreme Court

1.12-Continuous Accumulation of Seniority

Eighth Supreme Court Case Relating to Reemployment Statute *Tilton v. Missouri Pacific Railroad Co.*, 376 U.S. 169 (1964)

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Donald I. Tilton, Wilfred L. Beck Jr., and Guy H. McClearn Jr. worked for the Missouri Pacific Railroad Co. as “carman helpers” starting before the United States entered World War II. The war occasioned a shortage of qualified carmen, and carman helpers were temporarily promoted to carmen. Under the collective bargaining agreement between the railroad and the union, these temporary carmen were promoted to the full-fledged carman rank when they successfully completed 1,040 days (almost three years) of temporary carman service. Such a carman received carman seniority as of the date when he completed the 1,040 days of temporary carman service.

Messrs. Tilton, Beck, and McClearn were carman helpers promoted to temporary carman during the early days of World War II. They were drafted into the military before they could complete the 1,040 days of temporary carman service. After victory, these three men were honorably discharged and returned to work for the railroad as temporary carmen. They completed the 1,040-day work training period after returning to work and were then promoted to full-fledged carman status, with carman seniority dates as of the date of completion of the 1,040 days, after the war. “Petitioners contend that under this arrangement their absence in military service improperly affected their seniority because nonveteran employees who were junior on the temporary upgraded list are now senior on the permanent carmen’s list.” Tilton, 376 U.S. at 173.

After World War II, employment in the railroad industry began a long decline that continued for decades. Because of technological improvements and increased competition from other modes of transportation, fewer employees were needed. Railroads have always been and remain heavily unionized, even as unions have lost ground in most other industries. Under the collective bargaining agreements between railroads and railway unions, seniority governs layoffs and reductions in force. Even a few days difference in seniority can make all the difference between keeping one’s job and being laid off, and that difference can be felt many years into one’s railroad career. A decade and a half after the end of World War II, Messrs. Tilton, Beck, and McClearn filed suit against Missouri Pacific, contending that the railroad and the union were violating the reemployment statute by keeping these men on the seniority roster behind other World War II-era temporary carmen who were originally junior to these three men but who were not called to the colors during the war. The District Court, in an unreported decision, held that the three plaintiffs were not entitled to the relief they sought, and the Court of Appeals affirmed. *Tilton v. Missouri Pacific Railroad Co.*, 306 F.2d 870 (8th Cir. 1962). The Supreme Court granted certiorari and reversed the Court of Appeals, in a unanimous decision written by Justice Arthur Goldberg.

In the Supreme Court’s view, the controlling precedent was *Diehl v. Lehigh Valley Railway Co.*, 348 U.S. 960 (1955). In unusually blunt language for a Supreme Court decision, the unanimous Court rebuked the Court of Appeals: “Although it would be difficult to conceive of a more applicable and controlling precedent, the court below attempted to distinguish *Diehl* on the ground that there [in *Diehl*] it had been stipulated that the complainant ‘would have completed’ the work period on a given date if there had been no military service interruption. ... [In the view of the Court of Appeals] This case, unlike *Diehl*, ‘lacks the essentials of the automatic in the entire system of promotion from carman helper to full-fledged carman.’ ... This distinction, in our view, is untenable.” Tilton, 376 U.S. at 176-77.

“This does not mean that ... the veteran, upon returning from service, must be considered for promotion or seniority purposes as if he had continued to work on the job. A returning veteran cannot claim a promotion that depends solely upon satisfactory completion of a prerequisite period of employment training unless he first works that period. But upon satisfactorily completing that period, as petitioners did here, he can insist upon a seniority date reflecting

the delay caused by military service. Any lesser protection would deny him the benefit of the salutary provisions of sections 9(c)(1) and 9(c)(2) of the Universal Military Training and Service Act.” Tilton, 376 U.S. at 181.

I invite the reader’s attention to my Law Review 53, which cites and relies upon Tilton. The returning veteran cannot use military service as a substitute for completion of a bona fide employment training requirement; the veteran will be required to complete that requirement after returning from service. Upon completing the requirement, the reemployed veteran is entitled to have his or her seniority backdated to the date that he or she would have completed the training requirement but for the interruption necessitated by military service. In this way, the veteran suffers a temporary setback in his or her civilian career, because of the period of military service, but in the long run the veteran retains his or her seniority advantage over other employees in the same craft or class who were hired after the veteran but did not interrupt their civilian careers for military service. Tilton is an important case, elaborating upon and expanding the “escalator principle.” It is also important to note that in this case, as in several of the early Supreme Court reemployment cases, the veteran’s dispute was with the union more so than with the employer. In the Supreme Court, the Railway Employees Department of the AFL-CIO filed an amicus curiae (friend of the court) brief, urging affirmance of the Court of Appeals decision that rejected the veterans’ argument. The Veterans of Foreign Wars (VFW) National Rehabilitation Service filed an amicus curiae brief urging reversal of the Court of Appeals.