

LAW REVIEW¹ 08053

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Ninth Supreme Court Case Relating to Reemployment Statute
Brooks v. Missouri Pacific Railroad Co., 376 U.S. 182 (1964)

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1.3.2.2—Continuous Accumulation of Seniority—Escalator Principal

10.1—Supreme Court Case on Reemployment

Brooks is the companion case to *Tilton v. Missouri Pacific Railroad Co.*, 376 U.S. 169 (1964) (see Law Review 0846). The Supreme Court granted certiorari in both cases at the same time and decided *Brooks* immediately after *Tilton*. Robert C. Brooks began his employment with the Missouri Pacific Railroad on July 5, 1951, as an apprentice machinist at the railroad's shops in Monroe, La. He continued in that capacity until Jan. 24, 1952, when he was inducted into the Army. He was honorably discharged on November 7, 1953, and was reemployed by Missouri Pacific at Monroe on November 23, 1953.

Mr. Brooks was laid off on April 29, 1954, due to a reduction of work at Monroe. On July 6, 1954, he resumed his apprenticeship at the Missouri Pacific shops in St. Louis, Mo., where he

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.

remained until July 25, 1955, when he was transferred, at his request, to the shops at North Little Rock, Ark. Mr. Brooks finally completed his 1,040-day apprenticeship at North Little Rock on Jan. 23, 1958. His seniority date as a full-fledged journeyman machinist at North Little Rock was that date.

Mr. Brooks asserted that his seniority date at North Little Rock should be backdated to Nov. 3, 1955. He asserted that (but for his being drafted) he probably would have completed the apprenticeship program in North Little Rock as of that date. He filed suit in the U.S. District Court for the Eastern District of Arkansas, and the District Court ruled in his favor, holding that he probably would have completed the apprenticeship in North Little Rock by that date and ordering the railroad to backdate his seniority date to that date.

The railroad and the union appealed to the U.S. Court of Appeals for the Eighth Circuit, which reversed. Missouri Pacific Railroad Co. v. Brooks, 308 F.2d 531 (8th Cir. 1962). The Supreme Court granted certiorari and reversed the Court of Appeals, in a unanimous opinion written by Justice Arthur Goldberg. "We accept the conclusion of the District Court that but for the petitioner's military service he probably would have achieved, by virtue of continued satisfactory employment, seniority status as a journeyman mechanic in North Little Rock on Nov. 3, 1955. It follows, therefore, that he is entitled to this status under the relevant statutes. The judgment of the Court of Appeals is reversed and the cause remanded for proceedings in conformity with this opinion." Brooks, 376 U.S. at 185.

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ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

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Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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