

LAW REVIEW 901-update

Update (April 2009)

CATEGORY: 1.4

Non-Pecuniary Damages Available Under USERRA

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Smith v. United States Postal Service, 2008 U.S. App. LEXIS 18906 (Fed. Cir. Sept. 4, 2008).

In Law Review 0901 (January 2009), I wrote about the important new case of *Smith v. United States Postal Service*. That decision has now been published in the Federal Reporter, Third Series, the series of books that includes officially published decisions of the United States Courts of Appeals, including the Federal Circuit. The case citation is now *Smith v. United States Postal Service*, 540 F.3d 1364 (Fed. Cir. 2008).

The Federal Circuit held that the Merit Systems Protection Board (MSPB) erred when it refused to award Mr. Smith money damages for the loss of status and convenience during the period of January to August 2005, when Mr. Smith was employed in a "flexible" status with the Postal Service, instead of the full-time status to which he was entitled. The Federal Circuit remanded the case to the MSPB to determine the value of what Mr. Smith lost and to award him money damages in that amount.

After remand, Mr. Smith and the Postal Service reached a settlement, and the MSPB dismissed the case as settled on Feb. 10, 2009. *Smith v. United States Postal Service*, 2009 MSPB LEXIS 869 (Feb. 10, 2009). As is customary in such cases, the amount paid by the Postal Service to settle the case was not disclosed.