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14th Supreme Court Case Relating to Reemployment Statute *Coffy v. Republic Steel Corp.,* 447 U.S. 191 (1980)

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10.1—Supreme Court Cases on Reemployment

Thomas Coffy worked for Republic Steel from Jan. 24, 1969, until Sept. 9, 1969, when he was drafted. He was honorably discharged on Aug. 16, 1971 and made a timely application for reemployment on Sept. 14, 1971.

Six of the 14 Supreme Court reemployment cases have dealt with railroads. *Coffy* deals with another heavily unionized declining industry—steelmaking.

In its first case construing the reemployment statute, the Supreme Court enunciated the "escalator principle" when it held, "[The returning veteran] does not step back on the seniority

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[1]I 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.

[2]BA 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.

escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during the war." *Fishgold v. Sullivan Drydock & Repair Corp.,* 328 U.S. 275, 284-85 (1946).

It has always been the case that the seniority escalator can descend as well as ascend. The returning veteran is not protected from bad things (like layoffs and reductions-in-force) that clearly would have happened anyway, even if he or she had never left the civilian job. Indeed, the *Fishgold* case itself involved a descending escalator.

When Mr. Coffy returned from the Army in September 1971, he found that he would have been laid off anyway, in accordance with seniority, even if his Republic Steel employment had not been interrupted by military service. Accordingly, Mr. Coffy was reinstated by Republic Steel, but not into a real job. Mr. Coffy's "escalated reinstatement position" was on the layoff list.

Being laid off is not the same thing as being fired. In unionized industries, like railroads and steelmaking, layoffs are based on seniority, but so are recalls from layoff. A laid-off employee on the layoff list is still considered an employee, so long as there is some possibility that he or she will be recalled to work as business conditions improve. Mr. Coffy was eventually recalled to work on July 1, 1972.

Under the collective bargaining agreement between the major steelmakers (including Republic) and the United Steelworkers of America, laid-off steelworkers received Supplemental Unemployment Benefits (SUB). Seniority determined the duration of the period of unemployment for which the individual would receive this benefit.

Mr. Coffy received the SUB payment for 25 weeks, based on his eight months of Republic Steel employment before he was drafted. Republic refused to credit Mr. Coffy for the months when he was not working but *would have been working* but for his induction into the Army. If he had been credited for the military service time, he would have been eligible for 52 weeks of SUB payments.

Mr. Coffy filed suit, with the assistance of the Department of Labor and the Department of Justice, seeking credit for his military service time for purposes of computing his entitlement to SUB payments. The case bounced back and forth between the District Court and the Court of Appeals, before the Court of Appeals finally held that Mr. Coffy was not entitled to the military service credit that he had requested. *Coffy v. Republic Steel Corp.,* 590 F.2d 334 (6th Cir. 1978).

The Supreme Court granted *certiorari* because there were conflicting decisions from other circuits, on the application of the reemployment statute's escalator principle to SUB payments in the steel industry. In a well-written unanimous decision by Justice Thurgood Marshall, the Supreme Court reversed the Court of Appeals and held that

Republic Steel should have included Mr. Coffy's military service time in computing his entitlement to the SUB payments.

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