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USERRA and Arbitration—Good News from Nebraska

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Update on Sam Wright

1.4—USERRA enforcement
1.5—USERRA arbitration
1.8—Relationship between USERRA and other laws/policies

***Quiles v. Union Pacific Railroad Co.,* 2017 U.S. Dist. LEXIS 64812 (District of Nebraska April 28, 2017).**[3]

The Uniformed Services Employment and Reemployment Rights Act

As I have explained in Law Review 15067 (August 2015) and many other articles, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA) and

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[1] I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1700 "Law Review" articles about military voting rights, reemployment rights, and other military-legal topics, along with a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1500 of the articles.

[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. I have 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 more than 34 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 or by telephone at 800-809-9448, ext. 730. I will provide up to one hour of information without charge. If you need more than that, I will charge a very reasonable hourly rate. If you need a lawyer, I can suggest several well-qualified USERRA lawyers.

[3] This is a recent decision by Senior Judge Joseph F. Bataillon of the United States District Court for the District of Nebraska. He was appointed by President Bill Clinton and confirmed by the Senate in 1997. In 2014, he took Senior Status but still hears many cases per year.

President Bill Clinton signed it into law on October 13, 1994.[4] USERRA was a long-overdue rewrite of the Veterans' Reemployment Rights Act (VRRA), which was originally enacted in 1940, as part of the Selective Training and Service Act.[5]

Under USERRA, a person who meets five simple conditions[6] is entitled to *prompt* reinstatement in the civilian job[7] even if there is no present vacancy and reemploying the returning service member or veteran requires the displacement of another employee.[8] The returning service member or veteran who meets the five USERRA conditions is entitled to reemployment in the position that he or she *would have attained if continuously employed,* and that may be a better position than the one that he or she left when called to the colors.[9] Upon reemployment, the returning employee is entitled to be treated *as if he or she had been continuously employed in the civilian job* for seniority and pension purposes.[10] USERRA also makes it unlawful for an employer (federal, state, local, or private sector) to deny a person initial employment, retention in employment, or a promotion or benefit of employment on the basis of the person's membership in a uniformed service, application to join a uniformed service, performance of uniformed service, or application or obligation to perform future service or on the basis of the person's exercise of a USERRA right, participation in a USERRA investigation, or taking of an action to enforce a protection accorded to any person under USERRA.[11]

USERRA Enforcement

USERRA is enforced against federal executive agencies, as employers, by means of an action in the Merit Systems Protection Board (MSPB).[12] USERRA is enforced against state government

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[4] Public Law 103-353, 108 Stat. 3162. The citation means that USERRA was the 353rd new Public Law enacted during the 103rd Congress (1993-94), and you can find the text of the law, as signed in 1994, in Volume 108 of *Statutes at Large,* starting on page 3162. USERRA is codified in title 38 of the United States Code, at sections 4301 through 4335 (38 U.S.C. 4301-35).

[5] Public Law 76-783, 54 Stat. 885.

[6] The person must have left a civilian job (federal, state, local, or private sector) to perform uniformed service and must have given the employer prior oral or written notice. The person's cumulative period or periods of uniformed service, relating to the employer relationship for which he or she seeks reemployment, must not have exceeded five years. There are nine exemptions—kinds of service that do not count toward exhausting the person's five-year limit. Please see Law Review 16043 (May 2016) for a detailed discussion of the five-year limit. The person must have been released from the period of service without having received a disqualifying bad discharge from the military. After release, the person must have made a timely application for reemployment. After a period of service of 181 days or more, the person has 90 days to apply for reemployment. 38 U.S.C. 4312(e)(1)(D). Shorter deadlines apply after shorter periods of service.

[7] Ordinarily, the employer must have the person back on the payroll within two weeks after he or she applied for reemployment. 20 C.F.R. 1002.181. The citation is to title 20 of the Code of Federal Regulations, section 1002.181.

[8] Please see Law Review 17035 (April 2017).

[9] 38 U.S.C. 4313.

[10] 38 U.S.C. 4316(a), 4318.

[11] 38 U.S.C. 4311.

[12] 38 U.S.C. 4324. In such a proceeding, the claimant can be represented by the United States Office of Special Counsel (OSC) or by private counsel retained by the claimant, or the claimant can represent himself or herself.

agencies, as employers, by means of a lawsuit brought in the appropriate federal district court by the Attorney General of the United States, in the name of the United States, as plaintiff.[13] Alternatively, the individual claiming USERRA rights against a state government employer can bring the suit in a state court of competent jurisdiction, in accordance with the law of the state.[14]

When the defendant employer is a private employer or a political subdivision of a state,[15] the USERRA claimant can file suit in the United States District Court for any district where the employer maintains a place of business.[16] In such a suit, the plaintiff (person claiming that his or her USERRA rights were violated) can be represented by the United States Department of Justice (DOJ), if the person first complains to the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS) and the case is referred to DOJ, and if DOJ is reasonably satisfied that the person is entitled to the rights or benefits sought.[17]

Alternatively, the suit can be filed in federal district court by private counsel that the plaintiff retains, in three circumstances:

a. The plaintiff did not file a complaint with DOL-VETS.[18]
b. The plaintiff filed a complaint with DOL-VETS but chose not to request referral to DOJ.[19]
c. The plaintiff requested referral to DOJ, and DOJ notified the plaintiff that it was declining his or her request for representation.[20]

If the plaintiff proceeds with private counsel and prevails, the court may (in its discretion) award reasonable attorney fees to the successful plaintiff.[21] It is also possible for the plaintiff to represent himself or herself in filing and litigating such a lawsuit, but I counsel against that approach.[22]

Please see Law Review 16012 (March 2016) for a detailed discussion of the enforcement of USERRA against federal executive agencies.

[13] 38 U.S.C. 4323(a)(1) (final sentence).

[14] 38 U.S.C. 4323(b)(2). Please see Law Review 17032 (April 2017) for a detailed discussion of USERRA enforcement against state agencies as employers.

[15] "In this section [for purposes of USERRA enforcement], the term 'private employer' includes a political subdivision of a State." 38 U.S.C. 4323(i). Political subdivisions include counties, cities, school districts, and other units of local government.

[16] 38 U.S.C. 4323(c)(2).

[17] 38 U.S.C. 4323(a)(1).

[18] 38 U.S.C. 4323(a)(3)(A).

[19] 38 U.S.C. 4323(a)(3)(B).

[20] 38 U.S.C 4323(a)(3)(C).

[21] 38 U.S.C. 4323(h)(2).

[22] Abraham Lincoln said, "A man who represents himself has a fool for a client." And the law today is so much more complicated than it was during Lincoln's lifetime.

In such a suit, the named plaintiff is the individual service member or veteran, even if DOJ is bringing the lawsuit for the service member.[23]

What is the relationship between USERRA and other federal laws, state laws, local ordinances, collective bargaining agreements, other contracts, and employer policies?

USERRA is a floor and not a ceiling on the rights of those who are serving or have served our country in uniform. Section 4302 of USERRA provides:

> Nothing in this chapter [USERRA] shall supersede, nullify, or diminish any Federal of State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is *more beneficial, or is in addition to,* a right or benefit provided for such person by this chapter.[24]
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> *This chapter supersedes any State law* (including ant local law or ordinance), contract, agreement, policy, plan, practice, or other matter *that reduces, limits or eliminates* in any manner any right or benefit provided by this chapter, *including the establishment of additional prerequisites* to the exercise of any such right or the receipt of any such benefit.[25]

A state law can give service members and veterans *greater or additional rights* that are over and above the rights conferred by USERRA. For example, more than 40 states have state laws that give employees of the state and its political subdivisions the right to limited periods (typically 15 days) of *paid* military leave, for training or service in the National Guard or Reserve.[26] A state law cannot take away or limit rights conferred by USERRA, and a state law cannot impose additional prerequisites upon the exercise of USERRA rights.

Under the Constitution, a federal law like USERRA trumps a conflicting state law or even a state constitution:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the

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[23] Please see Law Review 17045 (May 2017).
[24] 38 U.S.C. 4302(a) (emphasis supplied).
[25] 38 U.S.C. 4302(b) (emphasis supplied).
[26] Please see our "state laws" section at www.roa.org/lawcenter. You will find the states listed alphabetically, and for each state you will find an article about the state laws governing paid military leave for state and local government employees, as well as an article about the state laws that protect the civilian jobs of National Guard members when they are on state active duty, which is not protected by USERRA. These state laws provide greater or additional rights, because USERRA does not apply to state active duty and because USERRA does not require an employer to grant *paid* military leave.

> United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.[27]

What is the relationship between USERRA and other federal laws? That is a more complicated question. USERRA does not trump another federal statute that provides greater or additional rights.[28] But USERRA does not necessarily trump another federal statute that seems to limit or constrain USERRA rights or that imposes an additional prerequisite upon the exercise of those rights. When there is an apparent or potential conflict between USERRA and another federal statute, it is necessary for a court to resolve the conflict and to determine which rule applies to the question at hand. This can be a complex exercise in statutory construction.

As is explained further below, I believe and I have argued that there is an irreconcilable conflict between USERRA and the Federal Arbitration Act (FAA) and that USERRA should control, but my argument was considered unpersuasive by a federal appellate court. The FAA was enacted 69 years before USERRA, but the fact that USERRA came later in time does not necessarily mean that the USERRA rule controls, because the law does not favor repeal by implication. When there is a conflict between two federal statutes, a court will try to *harmonize* the two laws—to read them together in a way that they do not conflict.

The Federal Arbitration Act

Almost a century ago (on February 12, 1925), President Calvin Coolidge signed the Federal Arbitration Act (FAA).[29] The most pertinent section of the FAA is as follows:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.[30]

This section means that if parties have agreed in advance, before any dispute has arisen, that any dispute will be adjudicated in arbitration, rather than state or federal court, they will be

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[27] United States Constitution, Article VI, Clause 2. Yes, it is capitalized just that way, in the style of the late 18th Century. This provision is called the "Supremacy Clause."

[28] For example, section 6323 of title 5, 5 U.S.C. 6323, gives federal employees who are Reserve Component members 15 work days per year of paid military leave. That is a greater or additional right that is not superseded by USERRA.

[29] Public Law 68-401, 43 Stat. 883. The FAA is codified in title 9 of the United States Code, at sections 1-16, 201-208, and 301-307, 9 U.S.C. 1-16, 201-208, and 301-307.

[30] 9 U.S.C. 2.

held to that agreement when a dispute arises. When Congress enacted the FAA, it apparently had in mind disputes between or among sophisticated business entities, like a dispute between the United States Steel Corporation and Ford Motor Company over a contract for the supply of steel for automobile manufacturing, and arbitration is entirely appropriate in cases of that nature. Unfortunately, the Supreme Court has held that the FAA also applies in the employment context and that if an employee has agreed in advance to submit employment-related disputes to arbitration, instead of litigating them in court, the employee will be held to that agreement.[31]

I think that arbitration is not an appropriate and just way to adjudicate employment and consumer disputes. For the employer or other company, these disputes are an everyday occurrence. For the individual employee or consumer, such a dispute is a once-in-a-lifetime occurrence. The arbitrator has an enormous financial incentive to rule against the individual and for the company, so that the company will select the same arbitrator again for the next dispute.

It is true that the arbitrator is supposedly required to apply the text and legislative history of the relevant statute (like USERRA) and the case law under that statute, just as a federal district court judge would. The problem is that there is no remedy if the arbitrator misapplies or even flouts the substantive law that he or she is supposedly applying.[32]

Does the FAA conflict with USERRA? If so, which law trumps the other?

I believe, and I have argued, that section 4302(b) of USERRA supersedes and overrides an agreement (usually signed by an employee as a condition of employment) to submit future USERRA disputes to binding arbitration. The right to have one's USERRA case adjudicated by a judge and jury, not an arbitrator, is a right conferred by section 4323 of USERRA. Section 4302(b) provides that USERRA supersedes an agreement that reduces, limits, or eliminates USERRA rights or that imposes additional prerequisites upon the exercise of those rights.

The problem is an unfavorable 5th Circuit precedent.

Michael T. Garrett was a Lieutenant Colonel (now a Colonel) in the Marine Corps Reserve. On the civilian side, he worked for Circuit City Stores, Inc. (CCSI) as a manager. During his CCSI employment, he was frequently harassed by his CCSI supervisors concerning his Marine Corps Reserve training and service and the absences from his CCSI job that were necessitated by such training and service, although those absences were clearly protected by USERRA. In March 2003, just as the United States Marine Corps and Army invaded Iraq, CCSI fired Garrett to avoid the inconvenience of having to replace him temporarily if he were called up and then to reinstate him upon his return from service. In accordance with section 4323 of USERRA, Garrett

[31] *Gilmer v. Interstate/Johnson Lane Corp.,* 500 U.S. 20 (1991).
[32] Please see Law Review 12033 (March 2012).

filed suit against CCSI in the United States District Court for the Northern District of Texas, and the case was assigned to Judge Barbara MG Lynn.

In lieu of filing an answer, CCSI filed a motion to compel arbitration, based on the "agreement" that Garrett "signed" in which he "agreed" that if he ever had a dispute with CCSI regarding his employment he would submit the dispute to arbitration rather than filing suit in state or federal court. Sometime after Garrett was hired by CCSI, the company sent to each employee (including Garrett) a letter and package of materials about CCSI's recently adopted arbitration program. Each employee was given 30 days to respond if he or she desired to opt out of this arbitration mechanism. Like almost all CCSI employees, Garrett did not respond to the letter. Based on this "agreement by default," CCSI asserted that Garrett was required to submit his USERRA dispute to arbitration rather than to the federal district court. Accordingly, the company argued that the court should grant the company's motion to compel arbitration.

Garrett's attorney (Robert E. Goodman) contacted me, and I contacted ROA life member Colonel John S. Odom, Jr., USAFR (now retired), an attorney in Shreveport, Louisiana and an expert on USERRA, the Servicemembers Civil Relief Act (SCRA), and other laws that are especially pertinent to those who serve our country in uniform. On behalf of ROA, Colonel Odom and I drafted and filed an amicus curiae (friend of the court) brief, and Colonel Odom argued orally for ROA in the district court hearing on the arbitration issue. Colonel Odom and I cited the text and legislative history[33] of USERRA and asserted that the motion to compel arbitration should be denied because section 4302(b) renders void agreements to submit future USERRA disputes to binding arbitration.

[33] USERRA's legislative history provides: "Section 4302(b) would reaffirm a general preemption as to State and local laws and ordinances, as well as to employer practices and agreements, which provide fewer rights or otherwise limit rights under amended chapter 43 or put additional conditions on those rights. *See Peel v. Florida Department of Transportation,* 600 F.2d 1070 (5th Cir. 1979); *Cronin v. Police Department of the City of New York,* 675 F. Supp. 847 (S.D.N.Y. 1987), and *Fishgold, supra,* 328 U.S. at 285, which provide that no employer practice or agreement can reduce, limit, or eliminate any right under chapter 43. Moreover, this section would reaffirm that additional resort to mechanisms such as grievance procedures or arbitration or similar administrative appeals is not required. *See McKinney v. Missouri Kansas Texas Railway Co.,* 357 U.S. 265, 270 (1958); *Beckley v. Lipe-Rollway Corp.,* 448 F. Supp. 563, 567 (N.D.N.Y. 1978). It is the Committee's [House Committee on Veterans' Affairs] intent that even if a person protected under the Act resorts to arbitration, any arbitration decision shall not be binding as a matter of law. *See Kidder v. Eastern Airlines, Inc.,* 469 F. Supp. 1060, 1064-65 (S.D. Fla. 1978). The Committee wishes to stress that rights under chapter 43 belong to the claimant, and he or she may waive those rights, either expressly or impliedly through conduct. Because of the remedial purposes of chapter 43, any waiver must, however, be clear, convincing, specific, unequivocal, and not under duress. Moreover, only known rights which are already in existence may be waived. *See Leonard v. United Air Lines, Inc.,* 972 F.2d 155, 159 (7th Cir. 1992). An express waiver of future statutory rights, such as one that an employer might wish to require as a condition of employment, would be contrary to public policy embodied in the Committee bill and would be void." House Committee Report, April 28, 1993 (H.R. Rep. No. 103-65, Part 1). This report is reprinted in full in Appendix B-1 of *The USERRA Manual,* by Kathryn Piscitelli and Edward Still. In the 2016 edition of the *Manual,* the quoted language can be found at pages 660-61.

Judge Lynn agreed with our argument and denied the motion to compel arbitration. Her scholarly opinion includes the following paragraph:

> USERRA's text and legislative history evidence Congress's clear intent to treat the right to a jury trial as a right not subject to waiver in favor of arbitration. Furthermore, the Court is cognizant that USERRA and its predecessor statutes have been liberally interpreted "for the benefit of those who left private life to serve their country in its hour of great need." *Alabama Power Co. v. Davis,* 431 U.S. 581, 584 (1977), citing *Fishgold v. Sullivan Drydock & Repair Corp.,* 328 U.S. 275, 285 (1946).[34]

CCSI appealed to the United States Court of Appeals for the 5th Circuit,[35] and Colonel Odom and I filed a new amicus brief in the appellate court. Unfortunately, the 5th Circuit reversed Judge Lynn and ordered arbitration. The 5th Circuit decision includes the following paragraph:

> It is not evident from the statutory language [of USERRA] that Congress intended to preclude arbitration simply by granting the possibility of a federal judicial forum. As noted above, the Supreme Court has held that "by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral rather than a judicial forum. *Mitsubishi,* 473 U.S. at 626-27. In cases involving the Sherman Act, the Securities and Exchange Act of 1934, the civil protections of the Racketeer Influenced and Corrupt Organizations Act (RICO), and the Securities Act of 1933, the Court has held substantive rights enforceable through arbitration. With this in mind, it is significant that section 4302(b) [of USERRA] does not mention mandatory arbitration or the FAA notwithstanding the *Gilmer* decision, issued only three years before the enactment of section 4302(b). When Congress enacts laws, it is presumed to be aware of all pertinent judgments and opinions of the Judicial Branch. *United States v. Barlow,* 41 F.3d 935, 943 (5th Cir. 1994). Congress was on notice of *Gilmer* but did not speak to the issue in the text of section 4302(b). The text of section 4302(b) is not a clear expression of congressional intent concerning the arbitration of servicemembers' employment disputes.[36]

The 6th Circuit, 9th Circuit, and 11th Circuit have followed *Garrett.*

The 6th Circuit,[37] the 9th Circuit,[38] and the 11th Circuit[39] have followed the *Garrett* precedent and have held that section 4302(b) of USERRA does not override an agreement to submit future USERRA disputes to binding arbitration.[40]

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[34] *Garrett v. Circuit City Stores, Inc.,* 338 F. Supp. 2d 717, 722 (N.D. Tex. 2004).

[35] The 5th Circuit is the federal appellate court that sits in New Orleans and hears appeals from district courts in Louisiana, Mississippi, and Texas.

[36] *Garrett v. Circuit City Stores, Inc.,* 449 F.3d 672, 677 (5th Cir. 2006).

[37] The 6th Circuit is the federal appellate court that sits in Cincinnati and hears appeals from district courts in Kentucky, Michigan, Ohio, and Tennessee.

Quiles v. Union Pacific Railroad Co.

In this USERRA case, the terminated employee filed suit in federal district court, claiming that the firing was unlawful under USERRA because it was motivated by his service in a Reserve Component of the armed forces. The defendant employer, Union Pacific Railroad Company, filed a motion to compel arbitration, as Circuit City did in the *Garrett* case. Senior Judge Joseph F. Bataillon denied the motion to compel arbitration. In his scholarly opinion, Judge Bataillon wrote:

> A party who has not agreed to arbitrate cannot be forced to do so. *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 648, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986). The party attempting to enforce the agreement must show that a valid arbitration exists and that the dispute falls within the scope of the agreement. *See Lyster v. Ryan's Family Steak Houses, Inc.*, 239 F.3d 943, 945 (8th Cir. 2001) (citing cases). [W]hether the parties have agreed to submit a particular dispute to arbitration is typically an issue for judicial determination. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83, 123 S. Ct. 588, 154 L. Ed. 2d 491 (2002). The Supreme Court noted the arbitrability determination depends on whether the parties "agree[d] to submit the arbitrability question itself to arbitration." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995). "[W]hen courts decide whether a party has agreed that arbitrators should decide arbitrability: Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence that they did so." *Kaplan*, 514 U.S. at 944 (alterations in original) (citing *AT & T Techs., Inc. v. Comm's Workers of Am.*, 475 U.S. 643, 649, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986)). "Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." *AT & T Techs.*, 475 U.S. at 649.
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> The court agrees with the plaintiff. As pointed [*14] out by the plaintiff, he never saw an arbitration agreement. The evidence shows plaintiff did not access the grant agreement as of October 26, 2016, and thus he did not ever accept the arbitration agreement. Plaintiff received the stock award with no requirement that he agree to arbitration. Further, and the court agrees, plaintiff contends that he only wishes to be placed in the same situation as existed prior to his termination. Plaintiff argues that a performance bonus could not transform his employment status into one of a contract. That includes

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[38] The 9th Circuit is the federal appellate court that sits in San Francisco and hears appeals from district courts in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington.

[39] The 11th Circuit is the federal appellate court that sits in Atlanta and hears appeals from district courts in Alabama, Florida, and Georgia.

[40] *See Landis v. Pinnacle Eye Care LLC,* 537 F.3d 559 (6th Cir. 2008); *Ziober v. BLB Resources, Inc.,* 839 F.3d 814 (9th Cir. 2016); and *Bodine v. Cook's Pest Control, Inc.,* 830 F.3d 1320 (11th Cir. 2016).

> his stock award. He argues he does not need any benefit from the arbitration agreement. He is seeking damages for wrongful termination including lost wages. These are remedies, he argues, and not a cause of action underlying the arbitration agreement.
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> The court agrees and finds plaintiff is not required to arbitrate under any of the many theories proposed by defendants. The court agrees that there are no facts to support a claim that plaintiff agreed to arbitrate. The court finds there is no valid, binding agreement to arbitrate as a matter of law. The issues in this case involve termination and possible compensation of the plaintiff. There [*15] is no evidence that plaintiff agreed to an arbitration contract. Under the facts in this case, plaintiff is not required to arbitrate his re-employment claim. Plaintiff has the right to sue under USERRA. To the extent this arbitration clause attempts to abrogate this right, it is void.[41]

I congratulate attorneys Thomas G. Jarrard[42] and Jerold R. Black for their imaginative, diligent, and successful (so far) representation of Mr. Quiles. This case is not over. We will keep the readers informed of developments in this important case and on this important issue.

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[41] *Quiles v. Union Pacific Railroad Co.,* 2017 U.S. Dist. LEXIS 64812, *13-15 (D. Neb. Apr. 28, 2017).

[42] Thomas G. Jarrard recently retired from the Marine Corps Reserve and is a life member of the Reserve Officers Association. He is the author of several "Law Review" articles in this series. He and I wrote the amicus curiae brief that ROA filed in the United States Supreme Court in *Staub v. Proctor Hospital.* Thomas has his home and office in Spokane, Washington and represents USERRA plaintiffs all over the country. His e-mail is TJarrard@att.net. His telephone number is (425) 239-7290.