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Does USERRA Apply to the Railroad Retirement System?

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Q: I have read with great interest your articles about re-employment rights and civilian pension entitlements. I retired recently from a whole career in the railroad industry-covered by the Railroad Retirement System (RRS). I am also retired from the Army Reserve. My railroad career was interrupted by several periods of both voluntary and involuntary military service and training, including a 1990-1991 mobilization for Operation Desert Storm.

I recently obtained, from the RRS, a detailed explanation of my RRS retirement benefits and the periods of covered railroad employment. I was shocked to learn that there are several gaps in my civilian employment history, caused by periods of military service. My monthly RRS pension check is less than it would have been if I had not been in the Army Reserve and had not been away from my civilian job for military service.

Based on your Law Review articles, I was under the impression that the Uniformed Services Employment and Reemployment Rights Act (USERRA) and its predecessor (the re-employment statute in effect before the 1994 enactment of USERRA) applied equally to voluntary as well as involuntary military service, in peacetime as well as wartime. Has the RRS violated USERRA?

A: The short answer to your question is NO, because the re-employment statute (USERRA or its predecessor) simply does not apply to the RRS. The re-employment statute applies to the relationship between an employer and employees. Thus, the re-employment statute applies to pension plans established by employers or by employers and unions together, but the RRS is different.

About 80 years ago, Congress (not railroad employers and unions) established the RRS, about 10 years before Congress established the Social Security System (SSS). Like the SSS, the RRS involves a tax imposed on employers and employees, funding benefits for retired employees. The RRS is a federal government agency, like the Social Security Administration. Congress, not employers and unions, has imposed a tax upon employers and employees, to fund benefits determined by Congress. In establishing the rules for military service credit under the RRS, Congress was less generous for veterans than Congress was when it enacted USERRA.

Q: It would seem that Congress, in establishing the rules for the RRS, should be at least as generous as it has required private employers and pension plans to be. Whatever happened to the federal government as model employer principle?

A: That is a good argument, but that it's a political and moral argument that you should make to your U.S. senators and representative. That is not a legal argument that you can make to a court. USERRA simply does not apply.

* Military title used for purposes of identification only. The views expressed herein are the personal views of the authors and should not be attributed to the U.S. Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. government.

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