

LAW REVIEW¹ 21016
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Another “Furlough or Leave of Absence” Case

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[About Sam Wright](#)

1.3.2.10—Furlough or leave of absence clause

***Travers v. FedEx Corp.*, 2020 U.S. Dist. LEXIS 127045, 2020 WL 4059893 (E.D. Pa. July 20, 2020).**

Gerard Travers, an employee of FedEx, is an enlisted Navy Reservist, now retired. He sued FedEx in the United States District Court for the Eastern District of Pennsylvania, claiming that the company had violated the Uniformed Services Employment and Reemployment Rights Act (USERRA).³ Specifically, he claimed that FedEx violated the law’s “furlough or leave of absence” clause.⁴ He claimed that FedEx was required to give him *paid* military leave because the

¹ I invite the reader’s attention to www.roa.org/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. I am the author of more than 1800 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. For 44 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 (VRRRA—the 1940 version of the federal reemployment statute) for 38 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 VRRRA 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 VRRRA 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.

³ 38 U.S.C. 4301-35.

⁴ 38 U.S.C. 4316(b).

company granted paid leave for comparable periods of absence for jury duty, bereavement, and other non-military reasons.⁵

Travers' case was assigned to Judge March A. Kearney. Judge Kearney granted the defendant's motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure (FRCP), agreeing with the defendant's assertion that Travers was not entitled to the relief he sought even if all the facts are exactly as Travers has asserted them to be. This is a "pure question of law" case. The facts are not in dispute. The dispute is about the meaning of USERRA's "furlough or leave of absence" clause as applied to those agreed-upon facts.

In ruling for the defendant, Judge Kearney cited and relied upon the decision of the United States District Court for the Northern District of Illinois rejecting a similar "furlough or leave of absence" claim against United Airlines.⁶ Months later, the United States Court of Appeals for the 7th Circuit⁷ reversed that Northern District of Illinois decision.⁸

Travers appealed to the United States Court of Appeals for the 3rd Circuit.⁹ The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), filed an *amicus curiae* (friend of the court) brief in the 3rd Circuit in support of Travers' appeal. The case is still pending. We will keep the readers informed of further developments in this important case.

The 3rd Circuit is not required to follow the 7th Circuit precedent, but it is likely that it will do so. If the 3rd Circuit decides the *Travers* case in a way that is inconsistent with how the 7th Circuit decided the *White* case, it is likely that the Supreme Court will grant certiorari (discretionary review) to resolve this conflict among the circuits.

ROA has filed an [Amicus brief](#) in the case of *Travers v. FedEx Corp*

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***Travers v. Federal Express Corp.*, 8 F.4th 198 (3rd Cir. 2021).**

Gerard Travers brought this lawsuit on behalf of himself and all others similarly situated (a class action suit) contending that because Federal Express grants *paid* leave for certain non-military

⁵ Travers' claim is almost identical to the claim that Eric White made against United Airlines. See Law Review 21014 (March 2021).

⁶ *White v. United Airlines, Inc.*, 416 F. Supp. 3d 736 (N.D. Ill. 2019).

⁷ The 7th Circuit is the federal appellate court that sits in Chicago and hears appeals from district courts in Illinois, Indiana, and Wisconsin.

⁸ *White v. United Airlines, Inc.*, 2021 U.S. App. LEXIS 2973, 2021 WL 364210 (7th Cir. Feb. 3, 2021). I discuss this recent decision in detail in Law Review 21034 (July 2021).

⁹ The 3rd Circuit is the federal appellate court that sits in Philadelphia and hears appeals from district courts in Delaware, New Jersey, Pennsylvania, and the United States Virgin Islands.

reasons, including jury duty and bereavement, it must grant *paid* military leave for a comparable period (like a drill weekend or a two-week annual training tour) when a company employee is away from work for military training or service. The assigned judge of the United States District Court for the Eastern District of Pennsylvania granted the defendant's motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The district court held that Travers and the class do not have a claim for which relief can be granted, even if all their factual assertions are correct.

The United States Court of Appeals for the 3rd Circuit reversed and vacated the district court's action and remanded the case back to the district court for trial. After discovery, there will be a trial, unless the parties settle.

We will keep the readers informed of developments in this interesting and important case.

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This article is one of 2000-plus "Law Review" articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

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. Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

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, 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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are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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