

LAW REVIEW¹ 21017

March 2021

Still Another “Furlough or Leave of Absence” Case

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

[About Sam Wright](#)

1.3.2.10—Furlough or leave of absence clause

Scanlan v. American Airlines Group, 384 F. Supp. 3d 520 (E.D. Pa. 2019).

James P. Scanlan is a Major General in the Air Force Reserve and a life member of the Reserve Officers Association, now doing business as the Reserve Organization of America. He is also a pilot for American Airlines (AA). Under the collective bargaining agreement between AA and the union representing AA pilots, the airline gives *paid* leave to pilots who are away from their AA jobs for short periods of jury duty, union work, or sickness, but AA does not give pilots *paid military leave* for comparable periods of military training, like drill weekends and traditional annual training periods.

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 (VRRA—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 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.

General Scanlan sued AA in the United States District Court for the Eastern District of Pennsylvania, and the case was assigned to Judge Harvey Bartle, III. In his lawsuit, General Scanlan alleged that AA violated the Uniformed Services Employment and Reemployment Rights Act (USERRA).³ Specifically, he asserted that AA's policy violates USERRA's "furlough or leave of absence" clause, which reads as follows:

- (1)** Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be—
 - (A)** deemed to be on furlough or leave of absence while performing such service; and
 - (B)** entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.⁴

General Scanlan, through his counsel, alleges that AA is required to pay pilots their regular compensation for short periods of missed work because the airline pays pilots for comparable periods of missed work for jury duty, union business, illness, and other non-military reasons. AA filed a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure (FRCP). Under that rule, the judge should dismiss a case only if he or she can say, after a careful review, that the plaintiff is not entitled to any relief that the court can award *even if all the facts are as alleged by the plaintiff*.

Judge Bartle denied AA's motion to dismiss, and the airline appealed to the United States Court of Appeals for the 3rd Circuit.⁵ Judge Bartle put the case on hold pending the outcome of the appeal.⁶ The 3rd Circuit has not yet ruled on the appeal. We will keep the readers informed of developments in this important case and on this important "furlough or leave of absence" issue.

Q: In your last four "Law Review" articles, including this article, you addressed four separate cases about reservists suing their civilian employers for allegedly violating the "furlough or leave of absence" clause of USERRA. Who represented the reservists in these cases?

³ 38 U.S.C. 4301-35.

⁴ 38 U.S.C. 4316(b)(1). This case is essentially identical to the cases discussed in Law Reviews 21034, 21035, and 21036.

⁵ 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.

⁶ See *Scanlan v. American Airlines Group*, 2020 U.S. Dist. LEXIS 207671 (E.D. Pa. Sept. 10, 2020).

A: The same group of lawyers, including ROA life members Thomas Jarrard and Matthew Crotty, represent all four named plaintiffs and the classes they seek to have the courts certify. For more information, contact attorney Thomas Jarrard at TJarrard@att.net or 425-239-7290.

Please join or support ROA

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.

If you are now serving or have ever served in any one of our nation’s seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you 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:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002