

## Reservist Wins USERRA Case against Gojet Airlines

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

[Update on Sam Wright](#)

- 1.2—USERRA forbids discrimination
- 1.4—USERRA enforcement
- 1.8—Relationship between USERRA and other laws/policies

### ***Sievers v. Gojet Airlines LLC*, 2017 U.S. Dist. LEXIS 186744 (E.D. Mo. November 13, 2017).**<sup>3</sup>

Dustin Sievers is an Air Force Reservist and was employed by Gojet Airlines (GJA) until he was fired. GJA operates commuter airliners using the names Delta Connection and United Connection. Sievers alleged that GJA violated the Uniformed Services Employment and Reemployment Rights Act (USERRA) in three ways:

- a. GJA failed to reinstate Sievers properly after he returned from a period of uniformed service.
- b. GJA discriminated against Sievers because of his military obligations.
- c. GJA retaliated against Sievers for exercising his USERRA rights.

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 1600 "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 very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1400 of the articles.

<sup>2</sup> 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 42 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 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 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](mailto:SWright@roa.org).

<sup>3</sup> This is a decision by Judge Catherine D. Perry of the United States District Court for the Eastern District of Missouri.

Sievers sought back pay, front pay, and liquidated (double) damages for willful USERRA violations, as well as attorney fees and costs. GJA argued that Sievers was required to elect among available remedies, but Judge Perry rejected that argument.

Sometime during the litigation, GJA offered to reinstate Sievers to the position from which he had been fired, but Sievers rejected the offer. GJA argued that Sievers' rejection of the offer precluded Sievers from collecting back pay and front pay after the rejection. Judge Perry held that the reasonableness of Sievers' rejection of the offer was a question for the jury to answer.

Judge Perry held that Sievers could present evidence about front pay during the trial, but the jury would not be asked to determine the amount of front pay or whether it should be awarded. She held that the propriety and amount of front pay was an equity question for her to address after the jury verdict.

GJA demanded documentation from Sievers as a condition precedent to reemploying him, and GJA sought to present evidence about the collective bargaining agreement (CBA) between GJA and the union representing GJA pilots. Judge Perry held that USERRA overrides the CBA insofar as the CBA purports to limit USERRA rights or to impose additional prerequisites upon the exercise of USERRA rights. She held that GJA could offer testimony about the CBA as part of its effort to establish that it had not violated USERRA willfully and should not be required to pay liquidated (double) damages. She further held that the CBA itself could not be offered into evidence.

GJA sought to present witnesses at the trial—other GJA employees who were Reservists or National Guard members and who were granted military leave without issue. Judge Perry rejected that proffered testimony.

Judge Perry held that no witness would be permitted to express an opinion as to the meaning of the Department of Labor (DOL) USERRA Regulations published in the Code of Federal Regulations, but that this order did not preclude testimony about what Sievers had said or other GJA employees had said to Sievers about those regulations.

This case was originally set for a jury trial to begin on 12/6/2017, and Judge Perry wrote this decision as part of the pre-trial preparation. The trial began as scheduled, but Judge Perry granted a mistrial before the trial ended. A new trial was conducted in April 2018 and Sievers won. On May 2, 2018, Judge Sievers ordered GJA to pay Sievers \$170,000 in attorney fees and court costs.

### **UPDATE AND CORRECTION**

March 2020 By Captain Samuel F. Wright, JAGC, USN (Ret.)

On May 11, 2018, after Go-Jet had paid \$170,000 for Dustin Sievers' attorney fees and had otherwise complied with the court's orders, Sievers and the airline jointly moved the court to dismiss the case, and the judge dismissed it. This case is now over.

In the article, I referred to Dustin Sievers as a member of the Air Force Reserve. In fact, he is a member of the Air National Guard. I regret the error.