

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Thomas Harwood, III v. American Airlines, Inc.

No. 20-2200, 21-1137, United States Court of Appeals for the Fourth Circuit (June 17, 2022)

SUMMARY

The Fourth Circuit affirmed a district court's damages award and attorneys' fees under the Uniformed Services Employment and Reemployment Rights Act (USERRA), holding that the employer's offered alternative position—which provided the same pay, benefits, and status—was equivalent under § 4313(a)(3)(A) and that the district court did not clearly err in its factual findings or abuse its discretion in calculating damages, fees, or costs. The opinion addresses USERRA's "escalator position" requirement, the totality-of-circumstances test for evaluating equivalent reemployment positions, and the deferential standard of review for district court fee determinations, including permissible across-the-board reductions for excessive or clerical billing.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Floyd; Niemeyer; Wynn
JURISDICTION	Federal
DECIDED	June 17, 2022
DOCKET	20-2200, 21-1137
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from district court's orders on remand regarding damages, attorneys' fees, and costs following a prior appeal.
STANDARD OF REVIEW	Findings of fact underlying damages award for clear error; damages award for abuse of discretion; attorneys' fees award for abuse of discretion (extremely deferential).
PRECEDENTIAL VALUE	Published
PARTIES	Major General Thomas P. Harwood, III v. American Airlines, Incorporated

TOPICS

- employment law
- military law
- damages
- attorney fees
- standard of review

PRACTICE AREAS

Employment Law

Military Law

Civil Procedure

QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding that the position American Airlines offered on October 22 was equivalent to Harwood's escalator position under USERRA § 4313(a)(3).
2. Whether the district court abused its discretion in calculating the damages award.
3. Whether the district court abused its discretion in awarding attorneys' fees and costs.

HOLDINGS

1. The district court did not clearly err; the position was equivalent because it came with the same pay and benefits and equal status, and the DOL regulations permit transfer to another location.
2. The district court did not abuse its discretion; the damages award of \$28,771.41 reflects the correct period from September 1 to October 22, 2015, based on the equivalence finding.
3. The district court did not abuse its discretion; it properly calculated the lodestar and made reasonable reductions for lack of success, clerical work, excessive pre-suit billing, and other factors.

KEY QUOTATIONS

"The default reemployment position, called the 'escalator position,' is 'the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by [military] service.'" (at 3-4)

"The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection." (at 13)

"district courts are best positioned to make factual determinations concerning warranted damages and the need for costs and fees." (at 15)

"Because a district court has close and intimate knowledge of the efforts expended and the value of the services rendered, the fee award must not be overturned unless it is clearly wrong." (at 11)

FACTUAL BACKGROUND

Harwood, an Air Force reservist and American Airlines pilot, took military leave from June 2013 to August 2015. During service, he was diagnosed with a heart condition. Upon return, he needed FAA medical certification to resume pilot duties. American Airlines acknowledged his reemployment rights but offered him a position in the Flight Technical Operations Group in Fort Worth with same pay and benefits, or extended military leave. Harwood initially rejected, later accepted, but then the FAA granted his medical certificate and he was reinstated as a pilot. The district court found that American Airlines violated USERRA by not reemploying him promptly on September 1, 2015, and awarded back pay from September 1 to January 26, 2016, less military pay. The Fourth Circuit affirmed liability but remanded to exclude damages for the period after the October 22 offer if the offered position was equivalent. On remand, the district court found the offered position equivalent

and reduced back pay to \$28,771.41 (Sept 1 to Oct 22). Harwood also sought attorneys' fees; the district court awarded reduced amounts.

PROCEDURAL HISTORY

Harwood sued American Airlines under USERRA for delayed reemployment. The district court granted summary judgment to Harwood on liability and awarded back pay. Both parties appealed. The Fourth Circuit affirmed liability but remanded for recalculation of damages, holding that American Airlines should not be liable for the period after it offered an equivalent position. On remand, the district court reduced the back pay award to \$28,771.41 and awarded \$87,267.86 in fees and costs. Harwood appeals these new awards.

DISPOSITION

affirmed

CASES CITED

- Butts v. Prince William Cnty. Sch. Bd., 844 F.3d 424, 430-31 (4th Cir. 2016)
- Harwood v. Am. Airlines, Inc., 963 F.3d 408 (4th Cir. 2020)
- Crawford v. Dep't of the Army, 718 F.3d 1361, 1366 (Fed. Cir. 2013)
- U.S. Equal Emp. Opportunity Comm'n v. Consol. Energy, Inc., 860 F.3d 131, 148-49 (4th Cir. 2017)
- Barber v. Whirlpool Corp., 34 F.3d 1268, 1279 (4th Cir. 1994)
- Grissom v. Mills Corp., 549 F.3d 313, 322 (4th Cir. 2008)
- Plyler v. Evatt, 902 F.2d 273, 278 (4th Cir. 1990)
- Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974)
- McAfee v. Boczar, 738 F.3d 81, 88 (4th Cir. 2013)
- Robinson v. Equifax Info. Servs., LLC, 560 F.3d 235, 244 (4th Cir. 2009)
- Fox v. Vice, 563 U.S. 826, 838 (2011)
- Hensley v. Eckerhart, 461 U.S. 424, 436-37 (1983)
- Doe v. Kidd, 656 F. App'x 643, 655 (4th Cir. 2016)
- Trimper v. City of Norfolk, 58 F.3d 68, 77 (4th Cir. 1995)
- Webb v. Cnty. Bd. of Educ. of Dyer Cnty., 471 U.S. 234, 242 (1985)
- Newport News Shipbuilding & Dry Dock Co. v. Holiday, 591 F.3d 219, 229 (4th Cir. 2009)
- Page v. Va. State Bd. of Elections, No. 3:13-cv-678, 2015 WL 11256614, at *11 (E.D. Va. Mar. 11, 2015)