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Administrative Law—Civil Service, Veterans Preference

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when the driver brought the truck to its destination the carrier's function ended, and "the circumstance that the chains were loosened by the driver of the truck is irrelevant."

An employer is liable for the torts of his employees committed in the course of their employment by him.[16] A general employee of one employer, however, may become a special employee of another, and thereby render the former employer free from any tort liability.[17] A general employee does not become a special employee unless his first employer surrenders, and his later one assumes, the power to command the employee as to the details as well as to the ultimate result of his work.[18] In the absence of proof that the general employer has surrendered control completely, it must be presumed that his control continued.[19] Generally, whether control has been surrendered will be determined according to the peculiar facts and circumstances of each case.[20]

ADMINISTRATIVE LAW

Civil Service, Veterans Preference

After World War II, the New York State Constitution provided that a disabled veteran, as to civil service lists, should be entitled to preference and should be appointed or promoted before any other appointments or promotions were made, without regard to his or her standing on any list from which such appointment or promotion was to be made.[1] In furtherance of this constitutional policy, the statutes of New York provided that any person whose name was on any eligible list should retain his rights and status while in military service; that if such person's name was reached while he was in military service he would be placed on a special eligible list which would have a preference to all subsequent lists; that for purposes of seniority, training and experience credit such person should "be deemed to have been appointed on the earliest date upon which any eligible, who was the lower on such original eligible list was appointed."[2] In *McQuillan v. Schechter*[3] the court, to protect the rights of veterans, extended its

16. *McNamara v. Leipzig*, 227 N. Y. 291, 125 N. E. 244 (1919); *Irwin v. Klein*, 271 N. Y. 477, 3 N. E.2d 601 (1936).
17. *Braxton v. Mendelson*, 233 N. Y. 122, 135 N. E. 198 (1922).
18. *Wawrzonek v. Central Hudson Gas & Electric Corp.*, 276 N. Y. 412, 12 N. E. 2d 525 (1938); *Irwin v. Klein, supra*, note 16.
19. *Delisa v. Arthur F. Schmidt Inc.*, 285 N. Y. 314, 34 N E. 2d 336 (1941); *Wawrzonek v. Central Hudson Gas & Electric Corp., supra*, note 19; *Irwin v. Klein, supra*, note 16; *Bartolomeo v. Charles Bennett Contracting Co.*, 245 N. Y. 66, 156 N. E. 98 (1927).
20. *Irwin v. Klein, supra*, note 16; *Braxton v. Mendelson, supra*, note 17.

1. N. Y. CONST. art. V, §6.
2. N. Y. MILITARY LAW §243(7).
3. 309 N. Y. 15, 127 N. E. 2d 731 (1955).

previous rulings which had held that when men already in the municipal service went to war and a promotional examination was held for which they would have been eligible, they might on their return take a comparable examination, be promoted, and upon a subsequent promotional examination based on the previous one, also be entitled to another special examination.[4] In the instant case, as opposed to *Farrell v. Watson*[5] and another[6] which the court had decided, the men involved had not been in municipal employment previous to their military service but had only been on an eligible list. Upon their return they were given appointments. On a promotional examination they claimed and the court agreed that their seniority dated, not from the time they were actually appointed, but from the time a lower man on the original list had been appointed. The disabled veterans in this case retroactively shot to the head of the original list because of their subsequent military service and disability. As they thus headed the original list, their seniority would date from the first appointment from that list.

The dissent was based on the Appellate Division opinion[7] which held that the Military Law[8] was intended to confer benefit only on those already in the municipal service, and that in any event seniority dated only from the appointment of one actually lower on the original list. It would not appear, however, that the legislature intended to construe narrowly the rights conferred on disabled veterans, in view of the language of its enactments[9] and in view of the State Constitution.[10]

Civil Service: Veterans

Claiming a violation of the statutory protection to veterans,[11] the discharged clerk of the Surrogate's Court of Erie County petitioned for reinstatement under Article 78 of the Civil Practice Act.[12] The Court held, that he was an independent officer rather than a subordinate employee and so was subject to dismissal at pleasure.[13]

Surrogate's Court Act §21 provides in part: "By a written order filed and recorded in his office, which he may in like manner revoke at pleasure, a surrogate

4. *Farrell v. Watson*, 304 N. Y. 630, 107 N. E. 2d 98 (1952), *affirming* 279 App. Div. 376, 110 N. Y. S. 2d 241 (1st Dep't 1952)
5. *Ibid.*
6. *Cotter v. Watson*, 306 N. Y. 681, 117 N. E. 2d 356 (1954).
7. 285 App. Div. 165, 135 N. Y S. 2d 853 (1954).
8. N. Y. MILITARY LAW §243(7).
9. *Ibid.*
10. Note 1, *supra.*
11. N. Y. CIVIL SERVICE LAW §22 provides that no veteran or volunteer fireman shall be removed from office except for incompetency or misconduct shown after a hearing.
12. N. Y. CIVIL PRAC. ACT §§1283-1306.
13. *O'Day v. Yeager*, 308 N. Y. 580, 127 N. E. 2d 585 (1955).