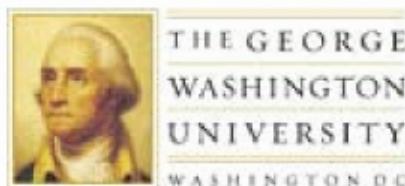


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Dewey v. Reynolds Metals Co.
402 U.S. 689 (1971)

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SUPREME COURT OF THE UNITED STATES

No. 835.—OCTOBER TERM, 1970

Robert Kenneth Dewey
v.
Reynolds Metals Company. } On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit.

[June 1, 1971]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

MR. JUSTICE HARLAN took no part in the consideration or decision of this case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 25, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 835, Dewey v. Reynolds Metals Co.

My vote at conference in this case was to affirm, but after further work and reflection preparatory to an opinion I have decided that Griggs v. Duke Power Co. applies here and that my vote should be for reversal. Although this leaves the conference vote 4 to 4 and there may be no writing in the case, a summary of the reasoning which I think to be dispositive follows.

Griggs does rely heavily on a prior record of discrimination. However, the holding is not limited to prior discrimination and its language covers this case.

The question on the merits is whether the company rule that petitioner violated because of his religious views--the requirement that employees assigned to work on Sunday must obtain their own replacements in order to be excused--is valid under Title VII as applied here. On its face the replacement requirement does not single out persons on the basis of religious faith, and concededly the rule is not motivated by religious animus nor designed to burden the exercise of religion. But neither were the testing criteria condemned in Griggs designed to bring about racial discrimination, motivated by racial animus, or phrased explicitly in terms of race.

Griggs states plainly that "good intent or absence of discriminatory intent" does not rehabilitate a company practice that is discriminatory in impact. The Griggs reasoning amounts to a definitive gloss on Title VII. Thus:

"The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation." (slip op. at 6)

"Congress directed the thrust of the Act to the consequences [emphasis in original] of employment practices, not simply the motivation." (slip op. at 8)

The question for Title VII purposes, then, is whether a challenged employment rule is discriminatory in effect. In Griggs the record showed that the testing criteria used had the practical effect of excluding persons from advancement on account of their race. In Dewey the replacement requirement, while "fair in form," had the practical effect of harming petitioner simply and solely because of his religious beliefs. Significantly, as the District Court in the present case notes, "There is no dispute that these religious beliefs of plaintiff [Dewey] are sincere. . . . Plaintiff honestly believes, as a part of his religion, that he should not work on Sunday, and that he also should not induce anyone else to work on Sunday."

Of course, under the Griggs mode of analysis, a practice having discriminatory consequences violates the statute only if the impact is not justified in terms of "a genuine business need"--"The touchstone is business necessity." But as the District Court in this case concluded, "There is no evidence [my emphasis] that defendant would suffer any hardship should plaintiff [Dewey] prevail in this case . . . even though the parties have been given ample opportunity to present evidence" on the matter of business justifications.

Qualified replacements were in fact available on each of the relevant Sundays. In short, on this record, the replacement requirement is simply not backed by any sort of "business need" or "business necessity."

TM
T.M.