

The Burger Court Opinion Writing Database

Johnson v. Railway Express Agency, Inc.
421 U.S. 454 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

May 8, 1975

Re: 73-1543 - Johnson v. REA

Dear Harry:

Please join me.

Regards,

WJB

Mr. Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

12/24/74

Dear Thompson

Bill Berman

+ I wonder if you
would like to talk

in Q. dissent in

73-1543 Johnson ✓

REA

WA

WOD

Will be delighted

Thank

JH

Wm. O. Douglas
OCT 14

✓

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 15, 1975

Dear Thurgood:

Please join me in your concur
and dissent in 73-1543, JOHNSON v. RAILWAY
EXPRESS, ET AL.

Woo/sp

William O. Douglas

Mr. Justice Marshall

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT ADVANCE COPY

W

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 8, 1975

RE: No. 73-1543 Johnson v. Railway Express

Dear Thurgood:

Please join me in your concurring and
dissenting opinion in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

REPRODUCED FROM THE COLLECTION

OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 24, 1975

No. 73-1543, Johnson v. Railway Express

Dear Harry,

I am glad to join your opinion for
the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTION

IN THE MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

✓

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

✓

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 25, 1975

Re: No. 73-1543 - Johnson v. Railway Express

Dear Harry:

I agree.

Sincerely,

Byron

Mr. Justice Blackmun

Copies to Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

REPRODUCED BY ADVANCE IN

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated: MAY 8 1975

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1543

Willie Johnson, Jr., Petitioner, v. Railway Express Agency, Inc., et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Sixth Circuit.
--	---	--

[May —, 1975]

MR. JUSTICE MARSHALL, concurring in part and dis-
senting in part.

In recognizing that Congress intended to supply ag-
grieved employees with independent but related avenues
of relief under Title VII of the Civil Rights Act of 1964
and § 1981 of the Civil Rights Act of 1866, the Court
emphasizes the importance of a full arsenal of weapons
to combat unlawful employment discrimination in the
private as well as the public sector. The majority stands
on firm ground in recognizing that both remedies are
available to victims of discriminatory practices. Accord-
ingly, I concur in Parts I-III of the Court's opinion.

But, the Court stumbles in its analysis of the relation
between the two statutes on the tolling question. The
majority concludes that the filing of a Title VII charge
with the Equal Employment Opportunity Commission
(EEOC) does not toll the applicable statute of limita-
tions. It relies exclusively on state law for the period
and effect of the limitation and discounts the importance
of the federal policies of conciliation and avoidance of
unnecessary litigation in this area. The majority recog-
nizes these policies but concludes that tolling the statute
of limitations for a § 1981 suit during the pendency of
Title VII proceedings is not an appropriate means of

Wm A
Doyle 0074

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated: MAY 12 1975

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1543

Willie Johnson, Jr.,
Petitioner,
v.
Railway Express Agency,
Inc., et al.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Sixth Circuit.

[May —, 1975]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, concurring in part and dissenting in part.

In recognizing that Congress intended to supply aggrieved employees with independent but related avenues of relief under Title VII of the Civil Rights Act of 1964 and § 1981 of the Civil Rights Act of 1866, the Court emphasizes the importance of a full arsenal of weapons to combat unlawful employment discrimination in the private as well as the public sector. The majority stands on firm ground in recognizing that both remedies are available to victims of discriminatory practices. Accordingly, I concur in Parts I-III of the Court's opinion.

But, the Court stumbles in its analysis of the relation between the two statutes on the tolling question. The majority concludes that the filing of a Title VII charge with the Equal Employment Opportunity Commission (EEOC) does not toll the applicable statute of limitations. It relies exclusively on state law for the period and effect of the limitation and discounts the importance of the federal policies of conciliation and avoidance of unnecessary litigation in this area. The majority recognizes these policies but concludes that tolling the statute of limitations for a § 1981 suit during the pendency of Title VII proceedings is not an appropriate means of

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

W. J. Doyle
00074

MAY 15 1975

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1543

<p>Willie Johnson, Jr., Petitioner, v. Railway Express Agency, Inc., et al.</p>	}	<p>On Writ of Certiorari to the United States Court of Ap- peals for the Sixth Circuit.</p>
---	---	---

[May —, 1975]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, concurring in part and dissenting in part.

In recognizing that Congress intended to supply aggrieved employees with independent but related avenues of relief under Title VII of the Civil Rights Act of 1964 and § 1981 of the Civil Rights Act of 1866, the Court emphasizes the importance of a full arsenal of weapons to combat unlawful employment discrimination in the private as well as the public sector. The majority stands on firm ground in recognizing that both remedies are available to victims of discriminatory practices. Accordingly, I concur in Parts I-III of the Court's opinion.

But, the Court stumbles in its analysis of the relation between the two statutes on the tolling question. The majority concludes that the filing of a Title VII charge with the Equal Employment Opportunity Commission (EEOC) does not toll the applicable statute of limitations. It relies exclusively on state law for the period and effect of the limitation and discounts the importance of the federal policies of conciliation and avoidance of unnecessary litigation in this area. The majority recognizes these policies but concludes that tolling the statute of limitations for a § 1981 suit during the pendency of Title VII proceedings is not an appropriate means of

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: 4/24/75

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1543

Willie Johnson, Jr., Petitioner, v. Railway Express Agency, Inc., et al.	} On Writ of Certiorari to the United States Court of Ap- peals for the Sixth Circuit.
--	--

[April —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether the timely filing of a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC), pursuant to § 706 of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e-5, tolls the running of the period of limitation applicable to an action, based on the same facts, instituted under 42 U. S. C. § 1981.

I

Petitioner, Willie Johnson, Jr., is a Negro. He started to work for respondent, Railway Express Agency, Inc., now, by change of name, REA Express, Inc. (REA), in Memphis, Tennessee in the spring of 1964 as an express handler. On May 31, 1967, while still employed by REA, but now as a driver rather than as a handler, petitioner, with others, timely filed with the EEOC a charge that REA was discriminating against its Negro employees with respect to seniority rules and job assignments. He also charged the respondent unions, Brotherhood of Railway Clerks Tri-State Local and Brotherhood of Railway Clerks Lily of the Valley Local, with maintaining racially

REPRODUCED FROM THE COLLECTION

THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

STYLISTIC CHANGES

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: _____

Recirculated: 4/28/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1543

Willie Johnson, Jr., Petitioner, v. Railway Express Agency, Inc., et al.	} On Writ of Certiorari to the United States Court of Ap- peals for the Sixth Circuit.
--	--

[April —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether the timely filing of a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC), pursuant to § 706 of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e-5, tolls the running of the period of limitation applicable to an action, based on the same facts, instituted under 42 U. S. C. § 1981.

I

Petitioner, Willie Johnson, Jr., is a Negro. He started to work for respondent, Railway Express Agency, Inc., now, by change of name, REA Express, Inc. (REA), in Memphis, Tennessee in the spring of 1964 as an express handler. On May 31, 1967, while still employed by REA, but now as a driver rather than as a handler, petitioner, with others, timely filed with the EEOC a charge that REA was discriminating against its Negro employees with respect to seniority rules and job assignments. He also charged the respondent unions, Brotherhood of Railway Clerks Tri-State Local and Brotherhood of Railway Clerks Lily of the Valley Local, with maintaining racially

REPRODUCED FROM THE COLLECTION

OF THE MANUSCRIPT DIVISION

U. S. DEPARTMENT OF JUSTICE

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

File

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 2, 1975

Re: No. 73-1543 - Johnson v. Railway Express
Agency, Inc.

Dear Lewis:

I appreciate your calling my attention to the case of McCrary v. Runyon, decided by the CA 4 en banc on April 15. I read the majority, concurring, and dissenting opinions with great interest. At this early date I am inclined to feel, as I believe you do, that we should seriously consider taking this case on certiorari if and when it is presented to us.

My initial reaction is that the presence of the CA 4 decision, divided though it is, does not require any revision of the material in the complete paragraph on page 6 of the Johnson slip opinion. The vital sentence there is directed to discrimination in private employment on the basis of race. If you feel strongly otherwise, let's discuss it some more.

I tried this out on my clerk Allan Gates, who worked with me on the opinion. A copy of his responsive memorandum is enclosed. I believe there is merit in what he says.

Sincerely,

Harry

Mr. Justice Powell

P. 14

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 ✓ Mr. Justice Marshall
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: _____

Recirculated: 5/9/75

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1543

Willie Johnson, Jr., Petitioner, v. Railway Express Agency, Inc., et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Sixth Circuit.
--	---	--

[April —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether the timely filing of a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC), pursuant to § 706 of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e-5, tolls the running of the period of limitation applicable to an action, based on the same facts, instituted under 42 U. S. C. § 1981.

I

Petitioner, Willie Johnson, Jr., is a Negro. He started to work for respondent, Railway Express Agency, Inc., now, by change of name, REA Express, Inc. (REA), in Memphis, Tennessee in the spring of 1964 as an express handler. On May 31, 1967, while still employed by REA, but now as a driver rather than as a handler, petitioner, with others, timely filed with the EEOC a charge that REA was discriminating against its Negro employees with respect to seniority rules and job assignments. He also charged the respondent unions, Brotherhood of Railway Clerks Tri-State Local and Brotherhood of Railway Clerks Lily of the Valley Local, with maintaining racially

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

LL

May 20, 1975

MEMORANDUM TO THE CONFERENCE:

Re: Holds for No. 73-1543 - Johnson v. REA

Two cases and one rehearing petition are being held for Johnson v. REA. Neither involves the narrow issue decided in Johnson, namely, whether the filing of a timely Title VII complaint with the EEOC tolls the statute of limitations for a § 1981 claim based on the same facts. Instead, the two cases concern exhaustion-of-administrative-remedies questions that relate only by implication to the decision in Johnson. I believe the Court's opinion leaves open all the questions raised in the two petitions for certiorari we have held, and I feel that the decision to grant or deny in the two cases is not significantly affected by the Johnson decision.

1. No. 74-476, Penn v. Schlesinger. This is a § 1981 class action by the Alabama State Conference of the NAACP and two Negro employees of the Department of Defense. The petitioners allege that the employment practices of the federal government in Alabama are racially discriminatory. On the Government's motion to dismiss, the District Court held that the claim was one upon which relief could be granted, that sovereign immunity did not bar relief against the named agency heads, and that petitioners had exhausted their administrative remedies sufficiently. On an interlocutory appeal under § 1292(b), a panel of the CA 5 affirmed, but the Court of Appeals reversed en banc by a 12-4 vote (Tuttle, Wisdom, Goldberg, and Morgan, JJ., dissenting). The majority held that exhaustion of administrative remedies was a prerequisite in any § 1981 action against the Government for employment discrimination. The majority also held that the petitioners had failed to exhaust the available Civil Service Commission remedies. Petitioners seek certiorari, arguing that exhaustion is not required and that, in any event, they adequately exhausted their available remedies. I make no recommendation and leave to each of you the decision on the petition for certiorari.

Wm. A. Doyle
0074

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

✓

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 25, 1975

No. 73-1543 Johnson v. REA, Inc.

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

✓

REPRODUCED FROM THE COLLECTION

OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 25, 1975

Re: No. 73-1543 - Johnson v. REA

Dear Harry:

Please join me.

Sincerely,
WRM

Mr. Justice Blackmun

Copies to the Conference

✓
REPRODUCED FROM THE COLLECTION

THE MANUSCRIPT DIVISION

U.S. SUPREME COURT