The Burger Court Opinion Writing Database

Trans World Airlines, Inc. v. Hardison

432 U.S. 63 (1977)

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

June 6, 1977

Re: 75-1126 TWA v. Hardison
75-1385 International Association of Machinists & Aerospace Workers v. Hardison

Dear Byron:

I join.

Regards,

WEB

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 3, 1977

RE: Nos. 75-1126 & 1385 TWA & International Association of Machinists, etc. et al. v. Hardison

Dear Thurgood:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 18, 1977

75-1126 - TWA v. Hardison

Dear Byron,

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

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 5-17-77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–1126 AND 75–1385

Trans World Airlines, Inc., Petitioner,
75–1126 *v.*
Larry G. Hardison et al.

International Association of Machinists and Aerospace Workers, AFL–CIO, et al., Petitioners,
75–1385 *v.*
Larry G. Hardison et al.

On Writs of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[May —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 703 (a)(1) of the Civil Rights Act of 1964, Title VII, 42 U. S. C. § 2000e–2 (a)(1), makes it an unlawful employment practice for an employer to discriminate against an employee or a prospective employee on the basis of his or her religion. At the time of the events involved here, a guideline of the Equal Employment Opportunity Commission (EEOC), 29 CFR § 1605.1 (b), required, as the Act itself now does, 42 U. S. C. § 2000e (j), that an employer, short of "undue hardship," make "reasonable accommodations" to the religious needs of its employees. The issue in this case is the extent of the employer's obligation under Title VII to accommodate an employee whose religious beliefs prohibit him from working on Saturdays.

I

We summarize briefly the facts found by the District Court. 375 F. Supp. 877 (WD Mo. 1974).

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 3, 7, 11, 13, 16-19

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 6-7-77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–1126 AND 75–1385

Trans World Airlines, Inc., Petitioner,
75–1126 *v.*
Larry G. Hardison et al.

International Association of Machinists and Aerospace Workers, AFL–CIO, et al., Petitioners,
75–1385 *v.*
Larry G. Hardison et al.

On Writs of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[May —, 1977]

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I

We summarize briefly the facts found by the District Court. 375 F. Supp. 877 (WD Mo. 1974).

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 17, 1977

MEMORANDUM TO THE CONFERENCE

Re: Cases held for TWA v. Hardison, Nos. 75-1126 & 75-1385

1. Parker Seal Co. v. Cummins, No. 75-478. This is the case heard earlier this Term in which we affirmed by an equally divided court a CA 6 decision that respondent, a Saturday Sabbatarian, had been wrongfully discharged from his employment for refusing to work on Saturdays. We held petitioner's petition for rehearing pending the outcome in Hardison. In Parker Seal respondent Cummins was a supervisor, and there were only a handful of supervisors available who could perform his job. For 14 months petitioner Parker Seal sought to accommodate respondent's religious observances. This led to discontent among respondent's co-workers because they were forced to work on Saturdays while respondent was not. Parker Seal differs from Hardison in that no seniority system was involved in Parker Seal and none of Parker Seal's employees were required to work on Sunday. Nevertheless, it is likely that the only accommodation available would have involved unequal treatment of respondent's fellow supervisors based upon their religious beliefs since none of them seemed willing to work more than his fair share of Saturdays. In Hardison we held that "reasonable accommodation" does not contemplate such unequal treatment. Accordingly, I shall vote to grant the petition for rehearing, vacate the judgment of the Court of Appeals, and remand for further consideration in light of Hardison.

2. United States v. City of Albuquerque, No. 76-1191. The employee in this case, Zamora, was a fireman. The Fire Department allocated the burden of undesirable work schedules through a system of rotating shifts. This meant that all firemen were scheduled to work some of the Saturdays in any given year. Under the Department's liberal policies, however, there were three ways that Zamora could have obtained Saturdays off: take annual leave; take unscheduled leave

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 18, 1977

Re: No. 75-1126, TWA v. Hardison

Dear Byron:

In due course, I will circulate a dissent.

Sincerely,

T. M.

Mr. Justice White

cc: The Conference

JUN 2 1977

No. 75-1126, TWA v. Hardison
No. 75-1385, International Association of Machinists & Aerospace Workers v. Hardison

MR. JUSTICE MARSHALL dissenting.

One of the most intractable problems arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq., has been whether an employer is guilty of religious discrimination when he discharges an employee (or refuses to hire a job applicant) because of the employee's religious practices. Particularly troublesome has been the plight of adherents to minority faiths who do not observe the holy days on which most businesses are closed -- Sundays, Christmas, and Easter -- but who need time off for their own days of religious observance. The Equal Employment Opportunity Commission has grappled with this problem in two sets of regulations, and in a long line of decisions. Initially the Commission concluded that an employer was "free under Title VII to establish a normal workweek . . . generally applicable to all employees," and that an employee could not "demand any alteration in [his work schedule] to accommodate his religious needs." 29 C.F.R. § 1605.1(a)(3), (b)(3) (1967).

1, 3-5, 8-12

6/10/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–1126 AND 75–1385

Trans World Airlines, Inc., Petitioner,
75–1126 *v.*
Larry G. Hardison et al.

International Association of Machinists and Aerospace Workers, AFL–CIO, et al., Petitioners,
75–1385 *v.*
Larry G. Hardison et al.

On Writs of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1977]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

One of the most intractable problems arising under Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, has been whether an employer is guilty of religious discrimination when he discharges an employee (or refuses to hire a job applicant) because of the employee's religious practices. Particularly troublesome has been the plight of adherents to minority faiths who do not observe the holy days on which most businesses are closed—Sundays, Christmas, and Easter—but who need time off for their own days of religious observance. The Equal Employment Opportunity Commission has grappled with this problem in two sets of regulations, and in a long line of decisions. Initially the Commission concluded that an employer was "free under Title VII to establish a normal workweek . . . generally applicable to all employees," and that an employee could not "demand any alteration in [his work schedule] to accomodate his religious needs." 29 CFR §§ 1605.1 (a)(3), (b)(3) (1967). Eventually, however,

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 22, 1977

Re: Cases held for TWA v. Hardison, 75-1126, 75-1385

Dear Byron:

As the author of the dissent in Hardison, I may lack "standing" to comment on your suggested dispositions of the held cases. But I find one of your suggestions troubling, and am unable to hold my tongue.

In No. 75-478, Parker Seal Co. v. Cummins, you suggest a remand because it "is likely that the only accommodation available would have involved unequal treatment of respondent's fellow supervisors based upon their religious beliefs since none of them seemed willing to work more than his fair share of Saturdays." But the record in the case is to the contrary. When respondent did not work, the supervisor from the adjoining department, who would have been required to work in any event because his employees were working, covered respondent's department as well. This was the same practice the company regularly followed for the second and third shifts, since no supervisor was assigned to respondent's department during those shifts. Thus I think it clear that petitioner would not have incurred "undue hardship," as defined in Hardison, had it continued to accommodate respondent's Sabbath observance as it had for the year preceeding respondent's discharge. Accordingly, I will vote to deny the petition for rehearing.

Sincerely,

T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 20, 1977

Re: No. 75-1126 - TWA v. Hardison

Dear Byron:

Please join me.

The allowance of costs will fall primarily to you as the author of the Court's opinion. I hope that you will see fit to disallow a portion -- perhaps even half -- of the cost of printing the Appendix. It seems to me -- and you will wish to check this -- that Judge Oliver's opinion, which is, as usual, fairly long, is printed twice. See Appendix pages 183 and 218. In addition, the Oliver opinion is printed in the TWA petition for cert and also in the union's petition for cert. The Court of Appeals opinion similarly is printed in the Appendix as well as in both of those petitions. Thus, we have a situation where the Appendix and briefs in the aggregate give us three printings of the opinion of the Court of Appeals and four printings of the District Court's opinion. In this day of high prices, I think this is too much. Even the Government follows the practice of not printing lower court opinions in the appendix when they have already appeared in the petition for cert. I make this suggestion earnestly for your serious consideration.

Sincerely,

HAB.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 18, 1977

No. 75-1126 TWA v. Hardison et al.

Dear Byron:

Please join me.

Sincerely,

L. Lewis

Mr. Justice White

LFP/lab

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 20, 1977

Re: No. 75-1126 - TWA v. Hardison

Dear Byron:

I will await Thurgood's dissent in this case.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 3, 1977

Re: No. 75-1126 - TWA v. Hardison

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 18, 1977

Re: 75-1126, 75-1385 - TWA v. Hardison

Dear Byron:

Please join me.

Respectfully,

JPS

Mr. Justice White

Copies to the Conference