

The Burger Court Opinion Writing Database

United Air Lines, Inc. v. Evans

431 U.S. 553 (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

May 25, 1977

RE: 76-333 - United Air Lines, Inc. v. Evans

Dear John:

I join.

Regards

WSB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

May 25, 1977

RE: No. 76-333 United Air Lines v. Evans

Dear Thurgood:

Please join me in your dissenting opinion in the
above.

Sincerely,

Brennan

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 4, 1977

Re: 76-333, United Air Lines v. Evans

Dear John,

What causes me difficulty in your opinion stems from the next to last sentence on page 5: "She has not alleged that the system discriminates against former female employees or against victims of past discrimination." Perhaps I misapprehend the import of this sentence, but it seems to me that it is inaccurate or at least misleading as a matter of fact.

A good deal of the reasoning in the first part of the opinion appears to depend upon the thought contained in this sentence. In the light of my view that the thought is a somewhat misleading one, I would hope that you could base the decision more squarely on §703(h). This might require some amplification of the two paragraphs on page 7.

Sincerely yours,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 5, 1977

Re: No. 76-333, United Air Lines v. Evans

Dear John,

Thank you for your letter of May 5. Your proposed rewording of the last sentence on page 5 satisfies my concerns. On that basis, I am glad to join your opinion for the Court.

Sincerely yours,

P.S.
✓

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 5, 1977

Re: No. 76-333, United Air Lines, Inc. v. Evans

Dear John:

I agree.

Sincerely,



Mr. Justice Stevens

Copies to Conference

MAY 31 1977

No. 76-333, United Air Lines v. Evans

MR. JUSTICE MARSHALL dissenting.

But for her sex, respondent Carolyn Evans presently would enjoy all of the seniority rights that she seeks through this litigation. Petitioner United Air Lines has denied her those rights pursuant to a policy that perpetuates past discrimination by awarding the choicest jobs to those possessing a credential married women were unlawfully prevented from acquiring: continuous tenure with United. While the complaint respondent filed in the district court was perhaps inartfully drawn,^{1/} it adequately draws into question this policy of United's.

For the reasons stated in the Court's opinion and in my separate, dissenting opinion in International Brotherhood of Teamsters v.

United States, ante, at , I think it indisputable that absent § 703(h), the seniority system at issuehere would constitute an "unlawful employment practice" under Title VII, 42 U.S.C. § 2000e-2(a)(2). And for the reasons developed at length in my dissenting opinion in Teamsters, ante, at , I believe § 703(h) does not immunize seniority systems that perpetuate post-Act discrimination.

MAY 26 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-338

United Air Lines, Inc., Petitioner, } On Writ of Certiorari to
v. } the United States Court
Carolyn J. Evans. } of Appeals for the Sev-
enth Circuit.

[May —, 1977]

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

But for her sex, respondent Carolyn Evans presently would enjoy all of the seniority rights that she seeks through this litigation. Petitioner United Air Lines has denied her those rights pursuant to a policy that perpetuates past discrimination by awarding the choicest jobs to those possessing a credential married women were unlawfully prevented from acquiring: continuous tenure with United. While the complaint respondent filed in the District Court was perhaps inartfully drawn,¹ it adequately draws into question this policy of United's.

For the reasons stated in the Court's opinion and in my separate, dissenting opinion in *International Brotherhood of Teamsters v. United States*, *ante*, at —, I think it indisputable that absent § 703 (h), the seniority system at issue here would constitute an "unlawful employment practice" under Title VII, 42 U. S. C. § 2000e-2 (a)(2). And for the

¹ Although the District Court dismissed respondent's complaint for lack of jurisdiction pursuant to Fed. Rule Civ. Proc. 12 (b)(1), the basis for his ruling was that the complaint was time barred. Thus, the dismissal closely resembles a dismissal for failure to state a claim upon which relief can be granted, and the only issue before us is whether "it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief. *Conley v. Gibson*, 355 U. S. 41, 45-46 (1957).

May 16, 1977

Re: No. 76-333 - United Air Lines v. Evans

Dear John:

I am probably with you in this case, but, for the moment,
I am waiting to see Thurgood's dissent.

Sincerely,

HAB

Mr. Justice Stevens

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 25, 1977

Re: No. 76-333 - United Air Lines v. Evans

Dear John:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 13, 1977

No. 76-333 United Air Lines v. Evans

Dear John:

Please join me.

Sincerely,

Lewis

Mr. Justice Stevens

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 11, 1977

Re: No. 76-333 United Air Lines v. Evans

Dear John:

Please join me.

Sincerely,

W. H. R.

Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice Stevens
MAY 4 1977

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-333

United Air Lines, Inc., Petitioner, } On Writ of Certiorari to
v. } the United States Court
Carolyn J. Evans. } of Appeals for the Sev-
enth Circuit.

[May —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Respondent was employed by United Air Lines as a flight attendant from November 1966 to February 1968. She was rehired in February 1972. Assuming, as she alleges, that her separation from employment in 1968 violated Title VII of the Civil Rights Act of 1964,¹ the question now presented is whether the employer is committing a second violation of Title VII by refusing to credit her with seniority for any period prior to February 1972.

Respondent filed charges with the Equal Employment Opportunity Commission in February 1973, alleging that United discriminated and continues to discriminate against her because she is a female. After receiving a letter granting her the right to sue, she commenced this action in the United States District Court for the Northern District of Illinois. Because the District Court dismissed her complaint, the facts which she has alleged are taken as true. They may be simply stated.

During respondent's initial period of employment, United maintained a policy of refusing to allow its female flight attendants to be married.² When she married in 1968, she

¹ 78 Stat. 253. Title VII, as amended, is codified in 42 U. S. C. § 2000e et seq. (1970 ed. and Supp. V).

² At that time United required that all flight attendants be female.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 5, 1977

Re: 76-333 - United Air Lines v. Evans

Dear Potter:

In response to your concern, I propose to change the next to the last sentence on page 5 to read:

"She has not alleged that the system discriminates against former female employees or that it treats former employees who were discharged for a discriminatory reason any differently than former employees who resigned or were discharged for a nondiscriminatory reason."

I would prefer not to enlarge the discussion of § 703(h) because, frankly, I do not believe there would be any statutory violation even if § 703(h) had not been enacted.

Respectfully,



Mr. Justice Stewart

Copies to the Conference

STYLISTIC CHANGES THROUGHOUT

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

From: Mr. Justice Stevens

Circulated:

Recirculated: MAY 26 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-333

United Air Lines, Inc., Petitioner,
v.
Carolyn J. Evans. } On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[May —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Respondent was employed by United Air Lines as a flight attendant from November 1966 to February 1968. She was rehired in February 1972. Assuming, as she alleges, that her separation from employment in 1968 violated Title VII of the Civil Rights Act of 1964,¹ the question now presented is whether the employer is committing a second violation of Title VII by refusing to credit her with seniority for any period prior to February 1972.

Respondent filed charges with the Equal Employment Opportunity Commission in February 1973, alleging that United discriminated and continues to discriminate against her because she is a female. After receiving a letter granting her the right to sue, she commenced this action in the United States District Court for the Northern District of Illinois. Because the District Court dismissed her complaint, the facts which she has alleged are taken as true. They may be simply stated.

During respondent's initial period of employment, United maintained a policy of refusing to allow its female flight attendants to be married.² When she married in 1968, she

¹ 78 Stat. 253. Title VII, as amended, is codified in 42 U. S. C. § 2000e *et seq.* (1970 ed. and Supp. V).

² At that time United required that all flight attendants be female,