

The Burger Court Opinion Writing Database

American Tobacco Co. v. Patterson

456 U.S. 63 (1982)

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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: 4 JUN 1981

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No. 80-1199 - AMERICAN TOBACCO CO. v. PATTERSON

Justice White, dissenting.

Section 703(h) of Title VII, 42 U.S.C § 2000e-2(h),
provides that:

"Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, ... provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin,"

A plurality of the Court of Appeals for the Fourth Circuit sitting en banc, has construed the protections afforded by §703(h) as not applying to any seniority system instituted after the effective date of Title VII. The plurality based its holding in part on its view that the legislative history of §703(h) was "replete with indications" which "conclusively demonstrates that

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SUPREME COURT OF THE UNITED STATES

AMERICAN TOBACCO COMPANY ET AL. v. JOHN
PATTERSON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF AP-
PEALS FOR THE FOURTH CIRCUIT

No. 80-1199. Decided June —, 1981

JUSTICE WHITE, with whom JUSTICE POWELL and JUSTICE
REHNQUIST join, dissenting.

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provides that:

“Notwithstanding any other provision of this sub-
chapter, it shall not be an unlawful employment practice
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tion, or different terms, conditions, or privileges of em-
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system. . . . provided that such differences are not the
result of an intention to discriminate because of race,
color, religion, sex, or national origin. . . .”

A plurality of the Court of Appeals for the Fourth Circuit,
sitting en banc, has construed the protections afforded by § 703
(h) as not applying to any seniority system instituted after
the effective date of Title VII. The plurality based its hold-
ing in part on its view that the legislative history of § 703 (h)
was “replete with indications” which “conclusively demon-
strates that Congress intended the immunity accorded senior-
ity systems by § 703 (h) to run only to those systems in
existence at the time of Title VII’s effective date, and of
course to routine post-Act applications of such systems.”
Accordingly, the plurality held that post-Act seniority systems
should be assessed under the test articulated in *Griggs v. Duke
Power Co.*, 401 U. S. 424 (1971), and not under the more
relaxed standard announced in *International Brotherhood of
Teamsters v. United States*, 431 U. S. 324 (1977), for chal-
lenges to bona fide seniority systems adopted before the effec-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 8, 1981

No. 80-1199 American Tobacco Co. v. Patterson

Dear Byron:

Please join me in your dissent from denial of certiorari.

Sincerely,



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

June 5, 1981

Re: No. 80-1199 American Tobacco Co. v. Patterson

Dear Byron:

Please join me in your dissent from denial of certiorari.

Sincerely,



Justice White

Copies to the Conference

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