

The Burger Court Opinion Writing Database

Zipes v. Trans World Airlines, Inc.

455 U.S. 385 (1982)

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

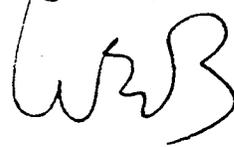
January 28, 1982

Re: No. 78-1545 - Zipes v. Trans World Airlines, Inc.
80-951 - Independent Federation of Flight
Attendants v. Trans World Airlines, Inc.

Dear Lewis:

Please show me joining your opinion concurring
in No. 78-1545 and in the judgment in No. 80-951.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

December 9, 1981

MEMORANDUM TO THE CONFERENCE

RE: No. 78-1545 and 80-951 Zipes v. Trans World Airlines

Some of us were concerned whether the Franks v. Bowman remedy of retroactive seniority was proper here. You may be interested in the attached memorandum of my clerk Mary Mikva on that question.

W.J.B.Jr.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 5, 1982

RE: Nos. 78-1545 and 80-951 Zipes & Independent
Federation of Flight Attendants v. Trans World
Airlines, Inc., et al.

Dear Byron:

I agree.

Sincerely,



Justice White

cc: The Conference

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To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: 4 JAN 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-1545, ~~78-1545~~ AND 80-951

78-1545 ANNE B. ZIPES, ET AL., PETITIONERS
v.
TRANS WORLD AIRLINES, INC.

80-951 INDEPENDENT FEDERATION OF FLIGHT
ATTENDANTS, PETITIONER
v.
TRANS WORLD AIRLINES, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[January —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The primary question in this case is whether the statutory time limit for filing charges under Title VII of the Civil Rights Act, 42 U. S. C. § 2000e *et seq.*, is a jurisdictional prerequisite to a suit in the District Court. Secondly, we resolve a dispute as to whether retroactive seniority was a proper remedy in this Title VII case.

I

In 1970, the Air Line Stewards and Stewardesses Association (ALSSA), then the collective bargaining agent of Trans World Airlines (TWA) flight attendants, brought a class action alleging that TWA practiced unlawful sex discrimination in violation of Title VII by its policy of grounding all female flight cabin attendants who became mothers, while their male counterparts who became fathers were permitted to continue

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To: The Chief Justice
U.S. Supreme Court
Washington, D.C. 20543
Date: _____
Re: _____

✓
STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

2nd DRAFT

17 FEB 1982

SUPREME COURT OF THE UNITED STATES

Nos. 78-1545 and 80-951

78-1545 ANNE B. ZIPES, ET AL., PETITIONERS
v.
TRANS WORLD AIRLINES, INC.

80-951 INDEPENDENT FEDERATION OF FLIGHT
ATTENDANTS, PETITIONER
v.
TRANS WORLD AIRLINES, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The primary question in these cases is whether the statutory time limit for filing charges under Title VII of the Civil Rights Act of 1964, 78 Stat. 235, as amended, 42 U. S. C. § 2000e *et seq.*, (1970 ed.) is a jurisdictional prerequisite to a suit in the District Court. Secondly, we resolve a dispute as to whether retroactive seniority was a proper remedy in this Title VII case.

I

In 1970, the Air Line Stewards and Stewardesses Association (ALSSA), then the collective bargaining agent of Trans World Airlines (TWA) flight attendants, brought a class action alleging that TWA practiced unlawful sex discrimination in violation of Title VII by its policy of grounding all female flight cabin attendants who became mothers, while their male

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

February 22, 1982

CHAMBERS OF
JUSTICE BYRON R. WHITE

MEMORANDUM TO THE CONFERENCE

Cases Held for No. 78-1545 and No. 80-951 -
Zipes v. Trans World Airlines

No. 81-373: Bridgeport Firefighters v. Association Against
Discrimination

No. 81-374: City of Bridgeport v. Association Against
Discrimination

Both these cases involve a Title VII suit for discrimination against minority applicants for firefighter jobs through the use of a written examination. CA2 upheld the District Court's remedial order against an attack, inter alia, that the city could not be held liable for discriminatory hiring based on the 1971 exam because the last such hirings occurred on May 2, 1973, and resps filed their first EEOC charges later than the 300 days permitted under §706(e), the timely filing provision applicable to complaints instituted before a state agency. The court explained that the 1971 exam and any hirings based on that exam were not isolated acts of discrimination, but part of a continuous policy of discrimination. The district court not only found a "clear-cut pattern of long-continued and egregious racial discrimination," but also made express findings as to several discriminatory acts that occurred within 300 days of the filing. The CA concluded that all of the claims were timely.

These cases were held for the possibility that we would hold Title VII's timely filing requirements to be jurisdictional or that we would address the continuing violation theory in No. 78-1545. Because we have held that timely filing is not a jurisdictional prerequisite to a Title VII suit and have dismissed the writ of certiorari in No. 78-1545 as improvidently granted, I recommend denying the petitions in these cases.

BHW

To: The Chief Justice
Justice Brennan
~~Justice Marshall~~
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

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STRICTLY CONFIDENTIAL CHANGES THROUGHOUT.
SEE PAGES:

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-1545 AND 80-951

78-1545 ANNE B. ZIPES, ET AL., PETITIONERS
v.
TRANS WORLD AIRLINES, INC.

80-951 INDEPENDENT FEDERATION OF FLIGHT
ATTENDANTS, PETITIONER
v.
TRANS WORLD AIRLINES, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The primary question in these cases is whether the statutory time limit for filing charges under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.*, (1970 ed.) is a jurisdictional prerequisite to a suit in the District Court. Secondly, we resolve a dispute as to whether retroactive seniority was a proper remedy in this Title VII case.

I

In 1970, the Air Line Stewards and Stewardesses Association (ALSSA), then the collective bargaining agent of Trans World Airlines (TWA) flight attendants, brought a class action alleging that TWA practiced unlawful sex discrimination in violation of Title VII by its policy of grounding all female flight cabin attendants who became mothers, while their male

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 29, 1982

Re: No. 78-1545 - Zipes v. Trans World Airlines
No. 80-951 - Independent Federation of Flight
Attendants v. Trans World Airlines

Dear Byron:

Please join me.

Sincerely,

T.M.
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 22, 1982

Re: No. 78-1545) - Zipes v. Trans World Airlines, Inc.
No. 80-951) - Independent Federation of Flight Attendants
Trans World Airlines, Inc.

Dear Bryon:

Please join me in your opinion for these cases and in digging
No. 78-1549.

Sincerely,



Justice White

cc: The Conference

✓
To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: JAN 15 1982

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-1545 AND 80-951

78-1545 ANNE B. ZIPES, ET AL., PETITIONERS
v.
TRANS WORLD AIRLINES, INC.

80-951 INDEPENDENT FEDERATION OF FLIGHT
ATTENDANTS, PETITIONER
v.
TRANS WORLD AIRLINES, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[January —, 1982]

JUSTICE POWELL concurring in No. 78-1545 and concurring in the judgment in No. 80-951.

The above cases arise out of the same protracted controversy, and the Court disposes of them in a single opinion. The only question in No. 78-1545 is whether the timely filing of an EEOC charge is a jurisdictional prerequisite to bringing a Title VII suit. I agree that timely filing is not jurisdictional and is subject to waiver and estoppel. Accordingly, I join parts I and II of the Court's opinion.

I join only the judgment in No. 80-951. My concern with the Court's opinion is that it does not make clear that a timely charge, as well as a violation of Title VII, is a prerequisite to disturbing rights under a *bona fide* seniority system protected by § 703(h), 42 U. S. C. § 2000 e-2(h).¹ This was

¹ In *Franks v. Bowman*, 424 U. S. 747 (1976), timely charges of discrimi-

2, 3

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

cc: Justice Powell

Revised: _____

Revised: JAN 18 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-1545 AND 80-951

78-1545 ANNE B. ZIPES, ET AL., PETITIONERS
v.
TRANS WORLD AIRLINES, INC.

80-951 INDEPENDENT FEDERATION OF FLIGHT
ATTENDANTS, PETITIONER
v.
TRANS WORLD AIRLINES, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[January —, 1982]

JUSTICE POWELL concurring in No. 78-1545 and concurring in the judgment in No. 80-951.

The above cases arise out of the same protracted controversy, and the Court disposes of them in a single opinion. The only question in No. 78-1545 is whether the timely filing of an EEOC charge is a jurisdictional prerequisite to bringing a Title VII suit. I agree that timely filing is not jurisdictional and is subject to waiver and estoppel. Accordingly, I join parts I and II of the Court's opinion.

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¹ In *Franks v. Bowman*, 424 U. S. 747 (1976), timely charges of discrimi-

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

FILED
JAN 19 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-1545 AND 80-951

78-1545 ANNE B. ZIPES, ET AL., PETITIONERS
v.
TRANS WORLD AIRLINES, INC.

80-951 INDEPENDENT FEDERATION OF FLIGHT
ATTENDANTS, PETITIONER
v.
TRANS WORLD AIRLINES, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[January —, 1982]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins,
concurring in No. 78-1545 and concurring in the judgment in
No. 80-951.

The above cases arise out of the same protracted controversy, and the Court disposes of them in a single opinion. The only question in No. 78-1545 is whether the timely filing of an EEOC charge is a jurisdictional prerequisite to bringing a Title VII suit. I agree that timely filing is not jurisdictional and is subject to waiver and estoppel. Accordingly, I join parts I and II of the Court's opinion.

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¹ In *Franks v. Bowman*, 424 U. S. 747 (1976), timely charges of discrimi-

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P. 1

Chief Justice
Justice Brennan
Justice White
Justice Powell
Justice Rehnquist
Justice Stevens
Justice Burger
Justice O'Connor

FEB 1 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-1545 AND 80-951

78-1545 ANNE B. ZIPES, ET AL., PETITIONERS
v.
TRANS WORLD AIRLINES, INC.

80-951 INDEPENDENT FEDERATION OF FLIGHT
ATTENDANTS, PETITIONER
v.
TRANS WORLD AIRLINES, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[January —, 1982]

JUSTICE POWELL, with whom THE CHIEF JUSTICE and
JUSTICE REHNQUIST join, concurring in No. 78-1545 and con-
curring in the judgment in No. 80-951.

The above cases arise out of the same protracted contro-
versy, and the Court disposes of them in a single opinion.
The only question in No. 78-1545 is whether the timely filing
of an EEOC charge is a jurisdictional prerequisite to bringing
a Title VII suit. I agree that timely filing is not jurisdic-
tional and is subject to waiver and estoppel. Accordingly, I
join parts I and II of the Court's opinion.

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the Court's opinion is that it does not make clear that a timely
charge, as well as a violation of Title VII, is a prerequisite to
disturbing rights under a *bona fide* seniority system pro-
tected by § 703(h), 42 U. S. C. § 2000e-2(h).¹ This was made

¹ In *Franks v. Bowman*, 424 U. S. 747 (1976), timely charges of discrimi-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 18, 1982

Re: Nos. 78-1545 & 80-951 Zipes v. Trans World Airlines

Dear Lewis:

Please join me in your separate concurrence in this case.

Sincerely,

WJW

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 4, 1982

Re: 78-1545 and 80-951 - Zipes v. TWA

Dear Byron:

Please add a note stating that I did not participate in the consideration or decision of these cases.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 6, 1982

No. 78-1545 Zipes v. Trans World Airlines
No. 80-951 Independent Fed. of Flight Attendants
v. Trans World Airlines, Inc.

Dear Byron,

Please join me in your opinion in the referenced cases.

Sincerely,



Justice White

Copies to the Conference

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