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Pullman-Standard v. Swint

456 U.S. 273 (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

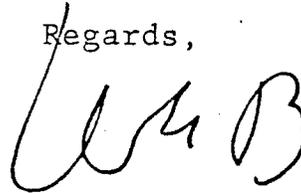
April 9, 1982

Re: No. 80-1190 - Pullman Standard v. Swint & Johnson
80-1193 - United Steelworkers of America v.
Swint & Johnson

Dear Byron:

I join your April 8 circulation.

Regards,

A handwritten signature in cursive script, appearing to read 'W. H. B.', likely representing Justice White.

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 19, 1982

RE: Nos. 80-1190 and 1193 Pullman Standard & United
Steelworkers v. Swint and Johnson

Dear Byron:

I agree and join you. But to be consistent with other parts of the opinion ought not the query at page 3, sixth and seventh lines from the bottom read:

"Was the system adopted or maintained because of its racially discriminatory impact?"

Sincerely,



Justice White

cc: The Conference

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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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1190 AND 80-1193

PULLMAN-STANDARD, A DIVISION OF PULLMAN,
INCORPORATED, PETITIONER

80-1190

v.

LOUIS SWINT AND WILLIE JOHNSON, ETC.

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
ET AL., PETITIONERS

80-1193

v.

LOUIS SWINT AND WILLIE JAMES JOHNSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[February —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

Respondents were black employees at the Bessemer, Alabama plant of petitioner, Pullman-Standard (the "company"), a manufacturer of railway freight cars and parts. They brought suit against the company and the union petitioners—the United Steelworkers of America, AFL-CIO-CLC, and its Local 1466 (collectively "USW")—alleging violations of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* and 42 U. S. C. § 1981.¹ As they come here, these cases in-

¹In their original complaint, besides challenging the seniority system discussed in this opinion, plaintiffs also alleged discrimination in job assignments, promotions, and the failure to post publicly a list of changes in assignments. These were all brought as "class" issues. Two charges of individual discrimination were also brought. The Court of Appeals held that Pullman-Standard had violated Title VII in making job assignments and in

pp. 15, 18-19

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

From: Justice White

Circulated: _____

Recirculated: 10 MAR 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1190 AND 80-1193

PULLMAN-STANDARD, A DIVISION OF PULLMAN,
INCORPORATED, PETITIONER

80-1190

v.

LOUIS SWINT AND WILLIE JOHNSON, ETC.

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
ET AL., PETITIONERS

80-1193

v.

LOUIS SWINT AND WILLIE JAMES JOHNSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[March —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

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¹ In their original complaint, besides challenging the seniority system discussed in this opinion, plaintiffs also alleged discrimination in job assignments, promotions, and the failure to post publicly a list of changes in assignments. These were all brought as "class" issues. Two charges of individual discrimination were also brought. The Court of Appeals held that Pullman-Standard had violated Title VII in making job assignments and in

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

pp. 8-9, 16-17 & Stylistic
Footnotes 12-21 renumbered

From: Justice White

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1190 AND 80-1193

PULLMAN-STANDARD, A DIVISION OF PULLMAN,
INCORPORATED, PETITIONER

80-1190

v.

LOUIS SWINT AND WILLIE JOHNSON, ETC.

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
ET AL., PETITIONERS

80-1193

v.

LOUIS SWINT AND WILLIE JAMES JOHNSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[April —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

Respondents were black employees at the Bessemer, Alabama plant of petitioner, Pullman-Standard (the "company"), a manufacturer of railway freight cars and parts. They brought suit against the company and the union petitioners—the United Steelworkers of America, AFL-CIO-CLC, and its Local 1466 (collectively "USW")—alleging violations of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* and 42 U. S. C. § 1981.¹ As they come here, these cases in-

¹In their original complaint, besides challenging the seniority system discussed in this opinion, plaintiffs also alleged discrimination in job assignments, promotions, and the failure to post publicly a list of changes in assignments. These were all brought as "class" issues. Two charges of individual discrimination were also brought. The Court of Appeals held that Pullman-Standard had violated Title VII in making job assignments and in

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 24, 1982

MEMORANDUM TO THE CONFERENCE

Re: Cases Held For Pullman-Standard v. Swint,
Nos. 80-1190 & 80-1193

Ten cases have been held for our decision in Swint. My recommendations are as follows.

No. 80-2117, Local Union No. 84, International Brotherhood of Electrical Workers, AFL-CIO v. United States, et al.
(Cert to CA 5)

This case began in 1968 when two private suits alleging race discrimination were consolidated with a Title VII pattern and practice suit brought by the United States. Georgia Power Company and several union locals were named as defendants. In 1971, the DC found unlawful many of Georgia Power's employment practices. The CA 5 affirmed in part and reversed in part. Following the remand to the DC, the parties agreed to a consent decree. This included a provision on seniority allowing affected class members to use their total time with the company for competitive seniority purposes, rather than their time in a particular seniority unit, as the collective bargaining agreement required. Following this Court's decision in Teamsters, Local 84 moved to modify the decree so as to reactivate the collective bargaining agreement's seniority system. The DC agreed to modify the decree in part, noting that the seniority system was facially neutral and that

"[T]here is no evidence before the court indicating that the seniority [system] provided for in the collective bargaining agreement between the company and Local 84 is not 'bona fide' as that term is used in §703(h). Indeed, the court notes that the system agreed to by the company and Local 84 is not untypical of those negotiated through collective bargaining."

The CA 5 reversed, holding that the DC had overlooked a number of findings made in the 1971 and 1974 decrees. It examined the record in light of the four-factor analysis put forth in James v. Stockham Valves & Fitting Co., 559 F.2d 310 (CA 5 1977), and it concluded that the seniority system did not pass

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

From: Justice Marshall

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Nos 80-1190 and 80-1193 Pullmand-Standard v. Swint

JUSTICE MARSHALL, dissenting.

In 1971, a group of Negro employees at Pullman-Standard's Bessemer, Alabama plant brought this class action suit against Pullman-Standard, the United Steelworkers of America and its Local 1466 (USW), and the International Association of Machinists and its Local 372 (IAM). The plaintiffs alleged, inter alia, that the departmental seniority system negotiated by both unions discriminated against Negroes in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§200e et seq, and the Civil Rights Act of 1866, 42 U.S.C. §1981. In 1974, the District Court for the Northern District of Alabama concluded that the seniority

STYLISTIC CHANGES THROUGHOUT.

P.P. 1/11-12

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

From: Justice Marshall

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SUPREME COURT OF THE UNITED STATES

Nos. 80-1190 AND 80-1193

PULLMAN-STANDARD, A DIVISION OF PULLMAN,
INCORPORATED, PETITIONER

80-1190

v.

LOUIS SWINT AND WILLIE JOHNSON, ETC.

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
ET AL., PETITIONERS

80-1193

v.

LOUIS SWINT AND WILLIE JAMES JOHNSON

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

[April 21, 1982]

JUSTICE MARSHALL, with whom JUSTICE BLACKMUN
joins, except as to Part I, dissenting.

In 1971, a group of Negro employees at Pullman-Standard's Bessemer, Alabama plant brought this class action suit against Pullman-Standard, the United Steelworkers of America and its Local 1466 (USW), and the International Association of Machinists and its Local 372 (IAM). The plaintiffs alleged, *inter alia*, that the departmental seniority system negotiated by both unions discriminated against Negroes in violation of Title VII of the Civil Rights Act of 1964, 42 U. S. C. §§200e *et seq*, and the Civil Rights Act of 1866, 42 U. S. C. §1981. In 1974, the District Court for the Northern District of Alabama concluded that the seniority system did not operate to discriminate against Negroes. A unanimous panel of the Fifth Circuit reversed. The Court ruled that the District Court had committed several errors of law, including failure to give proper weight to the role of the IAM, and had relied on patently inaccurate factual conclusions.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 15, 1982

Re: No. 80-1190) Pullman-Standard v. Swint
No. 80-1193) United Steelworkers, etc. v. Swint

Dear Byron:

You have written a persuasive opinion but, for now, I shall await the dissent.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 12, 1982

Re: No. 80-1190 - Pullman-Standard v. Swint
No. 80-1193 - USW v. Swint

Dear Thurgood:

By separate letter, I am glad to join your dissent except as to part I thereof. I refrain from joining part I because I was a member of the majority in Teamsters v. United States.

I have one suggestion for your consideration. What do you think of revising footnote 10 so as to read in its entirety as follows:

"Whether or not the Court of Appeals expressly ruled on the fourth James factor is irrelevant. As the Court of Appeals clearly stated, its conclusion was based on 'the totality of the facts and circumstances surrounding the creation and continuance of the departmental system at Pullman-Standard.' 624 F.2d, at 533; see also id., at 532 ('It is crystal clear that considerations of race permeated the negotiation and the adoption of the seniority system in 1941 and subsequent negotiations thereafter.');

and id., at 533 ('We consider significant in our decision ... conditions of racial discrimination which affected the negotiation and renegotiation of the system'). Even assuming that the District Court was correct in concluding that the system had been maintained free of any illegal purpose, the Court of Appeals was entitled to conclude that discriminatory intent had been demonstrated on the basis of other relevant evidence."

Sincerely,



Justice Marshall

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

April 12, 1982

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Re: No. 80-1190 - Pullman-Standard v. Swint
No. 80-1193 - USW v. Swint

Dear Thurgood:

Except for part I, I join your dissenting opinion. Would this mean that the heading would read "JUSTICE MARSHALL, joined, except as to part I, by JUSTICE BLACKMUN, dissenting"? I shall leave that detail to you.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 12, 1982

80-1190 Pullman Standard v. Swint

Dear Byron:

Please join me.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 1, 1982

Re: Nos. 80-1190 & 80-1193 Pullman Standard v. Swint

Dear Byron:

Please join me.

Sincerely,



Justice White

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 26, 1982

Re: 80-1190; 80-1193 - Pullman Standard
v. Swint

Dear Byron:

Your opinion is persuasive and I expect to join it. However, since what I am writing separately in Sumner v. Mata may be relevant, I am not yet entirely at rest.

Respectfully,



Justice White

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

From: **Justice Stevens**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1190 AND 80-1193

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80-1190

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UNITED STEELWORKERS OF AMERICA, AFL-CIO,
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LOUIS SWINT AND WILLIE JAMES JOHNSON

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

[April —, 1982]

JUSTICE STEVENS, concurring.

Except to the extent that the Court's preliminary comments on the burden of sustaining "any challenge to a seniority system under Title VII," *ante*, at 3, are inconsistent with the views I expressed separately in *American Tobacco Co. v. Patterson*, — U. S. —, I join the Court's opinion.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

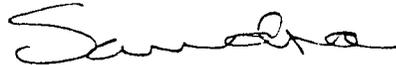
March 10, 1982

No. 80-1190 Pullman-Standard v. Swint

Dear Byron,

Please join me in the 2nd draft of your
opinion.

Sincerely,



Justice White

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