

The Burger Court Opinion Writing Database

Flight Attendants v. Trans World Airlines, Inc.

455 U.S. 385 (1982)

Paul J. Wahlbeck, George Washington University
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✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 14, 1981

80-951 Independent Federation v. TWA

Dear Bill:

Thank you for circulating a copy of Mary Mikva's interesting memo of December 8. It is a helpful summary of the situation.

At Conference, we were all together - as I recall - in 78-1545, but less harmonious with respect to the claim of the union in 80-951. Although I still am not entirely at rest, my concern as to the validity of the grant of retroactive competitive seniority remains.

I have not yet found any holding that TWA, prior to the settlement that is here at issue, waived the statute of limitations issue. Even if TWA may be said to have waived it as a part of the settlement, it is not at all clear to me that the present contract between TWA and respondent Union can be changed unilaterally by TWA at the request of third parties in a settlement negotiation.

This is quite different from Franks v. Bowman, where the Court had found both a violation of Title VII and timely filing of charges. The Court then awarded relief on the theory that the current employees were merely being placed in the position they would have been, relative to the victims, had no discrimination ever taken place. Two elements had been found to exist: discrimination and timely charges. Here, admittedly subclass B had not filed timely claims. In fact, many of their claims were several years old. Thus, in the absence of a waiver (and I am not satisfied there was a valid waiver as to the union), one of the essential elements of Bowman is absent.

Nor can I agree that the employees who took the places of the subclass B employees are "unjustly enriched". They are not strike breakers. Rather, they are innocent employees who - in many instances - have worked for years on unpopular flights in order to accrue their present

seniority. This is now something they have earned, not a bonus unjustly accrued.

In sum, if I understand this case correctly, an employer attempted to settle a Title VII action in part by bargaining away the rights of others. This seems unfair, and unless there is a compelling reason to the contrary that I have not yet identified, I remain inclined to dissent on this issue. I acknowledge, however, that from the outset this has been a confusing case.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 15, 1981

Re: 80-951 Independent Federation v. TWA

Dear Bill:

I am in substantial accord with Lewis' letter to you of December 14th, which finds this case substantially different from Franks v. Bowman.

Sincerely,

wm

Justice Brennan

cc: The Conference