

# The Burger Court Opinion Writing Database

## *Bowen v. Postal Service*

459 U.S. 212 (1983)

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

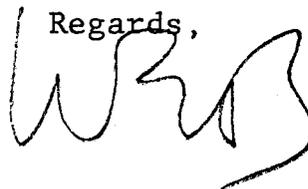
November 30, 1981

Re: No. 81-525 - Bowen v. U.S. Postal Service

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

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



CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 3, 1981

Re: No. 81-525 - Bowen v. United States Postal Service, et. al

Dear Lewis:

Although my vote was to join four in a summary reversal, I have concluded that I cannot join the per curiam you have prepared. I do not obtain the support from Vaca v. Sipes that you do. It perhaps can be read as you read it, but I think the fairer reading is contrary to your interpretation. In any event, it seems to me that Vaca is not sufficiently clear to serve as the basis of a summary decision holding that unions can be held liable for lost wages incurred after an improperly conducted grievance procedure. I suspect, too, that the result reached is somewhat out of line with the Court's observations in Czosek v. O'Mara, 397 U.S. 25, 29, and in Electrical Workers v. Foust, 442 U.S. 42, 49-50. The Sixth Circuit seems to agree. See St. Clair v. Local Union, 442 F.2d 128, 132 (1969); Milstead v. Teamsters, 580 F.2d 232, 236; Milstead v. Teamsters, 646 F.2d 395 (1981), cert denied \_\_\_\_ U.S. \_\_\_\_.

I am disturbed as much as you are by the result the Fourth Circuit reached. If the case is not given plenary consideration, I would reverse summarily in the exercise of our supervisory powers and generally along the lines expressed in your footnote 3.

If you obtain a fifth vote, as I now must assume you will, I shall write separately along the lines outlined above, unless, of course, Byron, as the author of Vaca, chooses to do so. I might add that I now could vote to grant this case.

Sincerely,

Justice Powell

cc: The Conference

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

*Conference voted  
to grant*

1\$0525G-24-NOV-81—DICK-rev.

*- even though  
I had*

1st DRAFT

From: Justice Powell

Circulated: NOV 25 1981

Recirculated:

*5 votes. I stated I*

SUPREME COURT OF THE UNITED STATES

*had no  
objection*

CHARLES V. BOWEN v. UNITED STATES POSTAL SERVICE, ET AL.

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

No. 81-525. Decided November —, 1981

PER CURIAM.

On February 21, 1976, following an altercation with another employee, petitioner Charles V. Bowen was suspended indefinitely without pay from his position with the United States Postal Service (Service). Bowen was a member of the American Postal Workers Union, AFL-CIO (Union), the recognized collective bargaining agent of the Service employees. After he was formally terminated on March 30, 1976, Bowen filed a grievance with the local Union as provided by the collective bargaining agreement. When the Union declined to take his grievance to arbitration, he filed suit in the United States District Court for the Western District of Virginia for damages against the Service and the Union.

In his complaint, Bowen charged that the Service had dismissed him without "just cause" in violation of the collective bargaining agreement and that the Union had breached its duty to represent him fairly. At trial Bowen introduced evidence indicating that at each step of the grievance process, the responsible Union officer had recommended that the grievance be pursued by the Union but that the national office, for no apparent reason, had refused to take the matter to arbitration.

Following trial to the jury,<sup>1</sup> and upon return of a special

<sup>1</sup>The jury sat only as an advisory panel with respect to Bowen's claims against the Service. See 28 U. S. C. § 2402 ("Any action against the United States under section 1346 shall be tried by the court without a jury").

— *pgs 216*

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

From: Justice Powell

Circulated: \_\_\_\_\_  
Recirculated: **DEC 1 1981**

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

CHARLES V. BOWEN *v.* UNITED STATES POSTAL  
SERVICE, ET AL.

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

No. 81-525. Decided December —, 1981

### PER CURIAM.

On February 21, 1976, following an altercation with another employee, petitioner Charles V. Bowen was suspended indefinitely without pay from his position with the United States Postal Service (Service). Bowen was a member of the American Postal Workers Union, AFL-CIO (Union), the recognized collective bargaining agent of the Service employees. After he was formally terminated on March 30, 1976, Bowen filed a grievance with the local Union as provided by the collective bargaining agreement. When the Union declined to take his grievance to arbitration, he filed suit in the United States District Court for the Western District of Virginia for damages against the Service and the Union.

In his complaint, Bowen charged that the Service had dismissed him without "just cause" in violation of the collective bargaining agreement and that the Union had breached its duty to represent him fairly. At trial Bowen introduced evidence indicating that at each step of the grievance process, the responsible Union officer had recommended that the grievance be pursued by the Union but that the national office, for no apparent reason, had refused to take the matter to arbitration.

Following trial to the jury,<sup>1</sup> and upon return of a special

---

<sup>1</sup>The jury sat only as an advisory panel with respect to Bowen's claims against the Service. See 28 U. S. C. § 2402 ("Any action against the United States under section 1346 shall be tried by the court without a jury").

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



CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 30, 1981

Re: No. 81-525 Bowen v. United States Postal Service

Dear Lewis:

Please join me in your Per Curiam.

Sincerely,

Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 30, 1981

Re: 81-525 - Bowen v. US Postal Service

Dear Lewis:

Except for two minor questions about footnote 3 on page 3, I am prepared to join your per curiam.

First, is it correct that Bowen had no basis for an appeal? Could he not have argued that the entire back pay award should have been assessed against either the Government or the Union in order to protect himself against the possibility that one of those parties would be successful on appeal. Second, I am not sure that the very last sentence that he could not appeal is correct because I believe he could have taken a conditional cross-appeal. Perhaps you could simply omit the last two sentences of the footnote.

Respectfully,



Justice Powell

Copies to the Conference

J  
agreed  
to do  
this

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

December 2, 1981

No. 81-525 Bowen v. United States Postal Service

Dear Lewis,

I agree with your draft of a Per Curiam in  
the referenced case.

Sincerely,

*Sandra*

Justice Powell

Copies to the Conference