

Employment Law

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Supreme Court's *US Airways* Decision: Employers Are Not Required to Override a Seniority-Based System to Accommodate a Disabled Employee

INTRODUCTION

Many employers have bona fide seniority systems negotiated in collective bargaining agreements or implemented in unilateral management policies. Seniority systems, while unusual in the non-union setting, have advantages, including encouraging longevity and loyalty in employees and neutralizing favoritism charges. Of course, such systems create employee expectations about future employment decisions and arguably create employee rights based on their seniority.

Under the Americans With Disabilities Act ("ADA"), employers are required to make reasonable accommodations for qualified individuals with disabilities. What should an employer do if an employee with a disability requests an accommodation that requires management to override the seniority-based system? In *US Airways, Inc. v. Barnett* (No. 00-1250), the Supreme Court addressed that question.

BACKGROUND

US Airways implemented a seniority system that allows non-union employees to bid for open positions. Under the program, an open position is awarded based on an employee's seniority. The seniority system had been in place for decades and governed over 14,000 US Airways agents. The seniority system is common in the airline industry and is similar in nature to other systems found in collective bargaining agreements.

Robert Barnett, a 10-year US Airways employee, injured his back in 1990. When he returned to work, he used his seniority to bid successfully for a less

physically demanding position in the mailroom. In 1992, due to a pending layoff, Barnett's position was considered open for employee bidding in accordance with the US Airways policy. He learned that more senior employees intended to bid for his mailroom position.

Barnett requested an ADA accommodation for his disability. Specifically, he asked US Airways to make an exception to the seniority system by allowing him to stay in his mailroom position despite the bids of more senior employees. US Airways allowed him to keep his position for five months while it considered how to respond to the request. Eventually, US Airways determined that the request was unreasonable because it violated the seniority system. Subsequently, Barnett lost his job to a senior bidder.

OVERVIEW OF THE ADA

The ADA is designed to protect qualified individuals from discrimination on the basis of a disability. Protection is afforded to qualified individuals who have a physical or mental impairment that substantially limits a major life activity, have a record of having had such an impairment, and/or are perceived by the employer as having such an impairment. See 42 U.S.C. §12102(2). A qualified individual is someone who satisfies the job-related requirements of the relevant job position and who can perform the essential functions of that position (with or without reasonable accommodation). See 42 U.S.C. §12111(8).

An employer violates the ADA if it refuses to provide a reasonable accommodation to a qualified individual

with a disability, unless the employer “can demonstrate that the [requested] accommodation would impose an undue hardship on the operation of business.” See 42 U.S.C. §§12112(a) and (b)(5)(A). The ADA identifies reassignment to a vacant position as one possible reasonable accommodation. See 42 U.S.C. § 12111(9)(b).

THE SUPREME COURT’S DECISION

The Supreme Court issued its 5-4 decision in *US Airways, Inc. v. Barnett* on April 29, 2002. The Court was asked to decide whether the ADA requires an employer to override its seniority-based system, an otherwise disability-neutral workplace policy, in order to accommodate a qualified individual with a disability.

The Court concluded that the requested accommodation would violate the more senior employees’ rights and undermine their expectations and entitlements arising from US Airways’ well-established and closely adhered to seniority system. In reaching its decision that the ADA does not require US Airways to violate its seniority system, the Court considered: (i) what constitutes a “reasonable accommodation;” (ii) what is an “undue hardship” for the employer; (iii) how the ADA’s burden-shifting standard applies; and (iv) what importance notions of fairness to, and expectations of, the non-disabled employees have in an ADA accommodation request.

Under the ADA, the employee bears the burden of proving that an accommodation is reasonable. If the employee meets this burden, the employer may attempt to prove that the accommodation would cause an undue hardship on business operations. Justice Stephen Breyer, writing for the majority, explained that the employee must show that the accommodation is reasonable, *i.e.*, is plausible or ordinarily possible under the employer’s particular circumstances. Once the plaintiff/employee makes this showing, the burden shifts to the employer to establish case-specific circumstances that demonstrate why the accommodation causes the employer an undue hardship in its operations.

The Court then focused on whether Barnett could satisfy his burden of proof—whether bypassing the seniority system to keep his mailroom position was a reasonable accommodation. The Court found that

Barnett could not show that his request was reasonable, ordinary or plausible because of the well-established seniority system. The Court’s rationale was rooted in the role seniority systems play in the workplace. In particular, employees have certain expectations and vested interests in the seniority system that result in uniform, impersonal job placement decisions. The Court stated that if management were required to trump seniority rules with accommodation requests, the system and the employees’ expectations deriving from that system could be drastically undermined by inconsistent, discretionary decisions of management.

The Rule

The Court held that a well-established, closely adhered to seniority system renders unreasonable any accommodation request that would override the system. In other words, an employer is not required to violate a seniority system to accommodate a disabled employee.

The Exception

The Court qualified its holding by noting that an employee can still show that special circumstances render an accommodation reasonable. Although the Court’s qualification eliminates any bright-line test to which employers could look for reducing the possibility of future litigation, it provides employers with guidance as to appropriate considerations when an accommodation request is contrary to a seniority system.

The *US Airways* opinion can be accessed at <http://www.supremecourtus.gov/opinions/01slipopinion.html>.

PRACTICAL IMPLICATIONS

Seniority Systems

If the employer has a seniority-based system, it should carefully adhere to its terms and make few, if any, exceptions or changes to the system. The Court found it significant that, although US Airways reserved “the right to change any and all” portions of the seniority system policy, it rarely altered the system. If an employer’s seniority-based system includes the right to change the policy, the employer should examine the frequency of changes to the policy and/or whether exceptions are made. If frequent changes or exceptions to the policy are made the employee could argue that the non-disabled employees do not have vested expectations based on the policy because of lack of consistency.

If an employer desires to avoid deviations from its seniority-based system to provide an accommodation, it must resist the temptation to change the system frequently or to make exceptions for other circumstances.

Other Disability-Neutral Policies

Although *US Airways* involved a bona fide seniority-based system, the Court suggested possible extensions of the rule to other disability-neutral workplace policies. If an accommodation request violates a clearly established and closely adhered to personnel policy, **and** the accommodation would be unfair and disruptive to other employees and their expectations under the policy, an employer could deny the request as unreasonable. Employers should be cautioned to consider any special circumstances presented by the employee for why the policy should be violated including frequent changes to the policy and past exceptions.

CONCLUSION

US Airways does not stand for the proposition that reassignments are always unreasonable. To the contrary, reassignments are often considered a reasonable accommodation under the ADA. The *US Airways* decision is limited to reassignment requests that violate clearly established and closely adhered to policies such as a bona fide seniority-based system. Otherwise, reassignment to accommodate an employee's disability most likely is reasonable.

As with other decisions, prudent employers are encouraged to seek legal advice if they are unsure how to apply this Court's recent decision to an accommodation request that conflicts with a disability-neutral workplace rule.

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