

STEVENS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 00–1250

US AIRWAYS, INC., PETITIONER *v.*
ROBERT BARNETT

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

[April 29, 2002]

JUSTICE STEVENS, concurring.

While I join the Court’s opinion, my colleagues’ separate writings prompt these additional comments.

A possible conflict with an employer’s seniority system is relevant to the question whether a disabled employee’s requested accommodation is “reasonable” within the meaning of the Americans With Disabilities Act of 1990. For that reason, to the extent that the Court of Appeals concluded that a seniority system is only relevant to the question whether a given accommodation would impose an “undue hardship” on an employer, or determined that such a system has only a minor bearing on the reasonableness inquiry, it misread the statute.

Although the Court of Appeals did not apply the standard that the Court endorses today, it correctly rejected the *per se* rule that petitioner has pressed upon us and properly reversed the District Court’s entry of summary judgment for petitioner. The Court of Appeals also correctly held that there was a triable issue of fact precluding the entry of summary judgment with respect to whether petitioner violated the statute by failing to engage in an interactive process concerning respondent’s three proposed accommodations. 228 F. 3d 1105, 1117 (CA9 2000) (en banc). This latter holding is untouched by the Court’s opinion today.

STEVENS, J., concurring

Among the questions that I have not been able to answer on the basis of the limited record that has been presented to us are: (1) whether the mailroom position held by respondent became open for bidding merely in response to a routine airline schedule change,¹ or as the direct consequence of the layoff of several thousand employees;² (2) whether respondent's requested accommodation should be viewed as an assignment to a vacant position,³ or as the maintenance of the status quo;⁴ and (3) exactly what impact the grant of respondent's request would have had on other employees.⁵ As I understand the Court's opinion, on remand, respondent will have the burden of answering these and other questions in order to overcome the presumption that petitioner's seniority system justified respondent's discharge.

¹Brief for Respondent 3 (quoting Lodging of Respondent 7–8 (letter, dated Mar. 8, 1994, from petitioner's counsel to EEOC)).

²Brief for Petitioner 5 (citing App. 21 (declaration in support of petitioner's summary judgment motion)).

³See *post*, at 3 (O'CONNOR, J., concurring).

⁴See *post*, at 4 (SOUTER, J., dissenting).

⁵See, *e.g.*, *post*, at 4 (SOUTER, J., dissenting) ("There was no evidence in the District Court of any unmanageable ripple effects from Barnett's request").