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 SOUTER, with whom JUSTICE GINSBURG joins, dissenting.

"[R]eassignment to a vacant position," 42 U. S. C. §12111(9) (1994 ed.), is one way an employer may "reasonabl[y] accommodat[e]" disabled employees under the Americans with Disabilities Act of 1990, 42 U. S. C. §12101 *et seq*. (1994 ed. and Supp. V). The Court today holds that a request for reassignment will nonetheless most likely be unreasonable when it would violate the terms of a seniority system imposed by an employer. Although I concur in the Court's appreciation of the value and importance of seniority systems, I do not believe my hand is free to accept the majority's result and therefore respectfully dissent.

Nothing in the ADA insulates seniority rules from the "reasonable accommodation" requirement, in marked contrast to Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, each of which has an explicit protection for seniority. See 42 U. S. C. §2000e–2(h) (1994 ed.) ("Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to [provide different benefits to employees] pursuant to a bona fide seniority . . . system . . . ."); 29 U. S. C. §623(f) (1994 ed.) ("It shall not be unlawful for an employer . . . to take any

action otherwise prohibited [under previous sections] . . . to observe the terms of a bona fide seniority system [except for involuntary retirement] . . ."). Because Congress modeled several of the ADA's provisions on Title VII,[1] its failure to replicate Title VII's exemption for seniority systems leaves the statute ambiguous, albeit with more than a hint that seniority rules do not inevitably carry the day.

In any event, the statute's legislative history resolves the ambiguity. The Committee Reports from both the House of Representatives and the Senate explain that seniority protections contained in a collective-bargaining agreement should not amount to more than "a factor" when it comes to deciding whether some accommodation at odds with the seniority rules is "reasonable" nevertheless. H. R. Rep. No. 101–485, pt. 2, p. 63 (1990), (existence of collectively bargained protections for seniority "would not be determinative" on the issue whether an accommodation was reasonable); S. Rep. No. 101–116, p. 32 (1989) (a collective-bargaining agreement assigning jobs based on seniority "may be considered as a factor in determining" whether an accommodation is reasonable). Here, of course, it does not matter whether the congressional committees were right or wrong in thinking that views of sound ADA application could reduce a collectively bargained seniority policy to the level of "a factor," in the absence of a specific statutory provision to that effect. In fact, I doubt that any interpretive clue in legislative history could trump settled law specifically making collective bargaining agreements enforceable. See, *e.g.*, §301(a), Labor Management Relations Act, 1947, 29 U. S. C.

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[1] It is evident from the legislative history that several provisions of Title VII were copied or incorporated by reference into the ADA. See, *e.g.*, S. Rep. No. 101–116, pp. 2, 25, 43 (1989); H. R. Rep. No. 101–485, pt. 2, pp. 54, 76–77 (1990).

§185(a) (permitting suit in federal court to enforce collective bargaining agreements); *Textile Workers Lincoln Mills of Ala.*, 353 U. S. 448 (1957) (holding that §301(a) expresses a federal policy in favor of the enforceability of labor contracts); *Charles Dowd Box Co.* v. *Courtney*, 368 U. S. 502, 509 (1962) ("Section 301(a) reflects congressional recognition of the vital importance of assuring the enforceability of [collective-bargaining] agreements"). The point in this case, however, is simply to recognize that if Congress considered that sort of agreement no more than a factor in the analysis, surely no greater weight was meant for a seniority scheme like the one before us, unilaterally imposed by the employer, and, unlike collective bargaining agreements, not singled out for protection by any positive federal statute.

This legislative history also specifically rules out the majority's reliance on *Trans World Airlines, Inc.* v. *Hardison*, 432 U. S. 63 (1977), *ante,* at 11, a case involving a request for a religious accommodation under Title VII that would have broken the seniority rules of a collective-bargaining agreement. We held that such an accommodation would not be "reasonable," and said that our conclusion was "supported" by Title VII's explicit exemption for seniority systems. 432 U. S., at 79–82. The committees of both Houses of Congress dealing with the ADA were aware of this case and expressed a choice against treating it as authority under the ADA, with its lack of any provision for maintaining seniority rules. *E.g.*, H. R. Rep. No. 101–485, pt. 2, at 68 ("The Committee wishes to make it clear that the principles enunciated by the Supreme Court in *TWA* v. *Hardison* . . . are not applicable to this legislation."); S. Rep. No. 101–116, at 36 (same).[2]

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[2] The House Report singles out *Hardison*'s equation of "undue hardship" and anything more than a "de minimus *[sic]* cost" as being inap-

Because a unilaterally-imposed seniority system enjoys no special protection under the ADA, a consideration of facts peculiar to this very case is needed to gauge whether Barnett has carried the burden of showing his proposed accommodation to be a "reasonable" one despite the policy in force at US Airways. The majority describes this as a burden to show the accommodation is "plausible" or "feasible," *ante,* at 10, and I believe Barnett has met it.

He held the mailroom job for two years before learning that employees with greater seniority planned to bid for the position, given US Airways's decision to declare the job "vacant." Thus, perhaps unlike ADA claimants who request accommodation through reassignment, Barnett was seeking not a change but a continuation of the status quo. All he asked was that US Airways refrain from declaring the position "vacant"; he did not ask to bump any other employee and no one would have lost a job on his account. There was no evidence in the District Court of any unmanageable ripple effects from Barnett's request, or showing that he would have overstepped an inordinate number of seniority levels by remaining where he was.

In fact, it is hard to see the seniority scheme here as any match for Barnett's ADA requests, since US Airways apparently took pains to ensure that its seniority rules raised no great expectations. In its policy statement, US Airways said that "[t]he Agent Personnel Policy Guide is <u>not</u> intended to be a contract" and that "USAir reserves

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plicable to the ADA. By contrast, *Hardison* itself addressed seniority systems not only in its analysis of undue hardship, but also in its analysis of reasonable accommodation. *Hardison*, 432 U. S., at 81, 84. Nonetheless, Congress's disavowal of *Hardison* in light of the "crucial role that reasonable accommodation plays in ensuring meaningful employment opportunities for people with disabilities," H. R. Rep. No. 101–485, pt. 2, at 68, renders that case singularly inappropriate to bolster the Court's holding today.

the right to change any and all of the stated policies and procedures in this Guide at any time, without advanced notice." Lodging of Respondent 2 (emphasis in original). While I will skip any state-by-state analysis of the legal treatment of employee handbooks (a source of many lawyers' fees) it is safe to say that the contract law of a number of jurisdictions would treat this disclaimer as fatal to any claim an employee might make to enforce the seniority policy over an employer's contrary decision.[3]

With US Airways itself insisting that its seniority system was noncontractual and modifiable at will, there is no reason to think that Barnett's accommodation would have resulted in anything more than minimal disruption to US Airways's operations, if that. Barnett has shown his requested accommodation to be "reasonable," and the burden ought to shift to US Airways if it wishes to claim that, in spite of surface appearances, violation of the seniority scheme would have worked an undue hardship. I would therefore affirm the Ninth Circuit.

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[3] The Court would allow a plaintiff to argue that a particular system was so riddled with exceptions so as not to engender expectations of consistent treatment. *Ante,* at 13–14.