

No. 22-174

In the Supreme Court of the United States

GERALD E. GROFF, PETITIONER.

v.

LOUIS DEJOY, POSTMASTER GENERAL

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT

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Facts of the Case

In 1964, Congress enacted Title VII, which made employers' discrimination based on one's protected characteristics, including "religion," unlawful. 42 U.S.C. 2000e-2(a)(1). Later, a similar requirement was placed upon federal employers, such as the United States Postal Service. 42 U.S.C. 2000e-16(a). The Equal Employment Opportunity Commission in 1967 issued guidelines interpreting Title VII's religious stipulations, stating it will "include[] an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees" when "such accommodations can be made without undue hardship on the conduct of the employer's business." 29 C.F.R. 1605.1(b) (1968). This Court helped determine what "undue hardship" meant in the *Trans World Airlines Inc. v. Hardison* (1977) case, which established two separate principles. Firstly, "Title VII does not require" an employer to "deprive [other employees] of their contractual rights." *Id.* at 81; see *id.* At 79-81, if one's religious obligations interfere with others. Secondly, bearing more than a *de minimus* cost quantifies an undue hardship—*Id.* at 84.

This case begins with Petitioner Groff, who was employed by USPS in 2012 as a Rural Carrier Associate. A Rural Carrier Associate is "a non-career employee who provides coverage for absent career employees." *Ibid.* and "are scheduled on an as-needed basis." *Id.* at 36a. Because of this, "the job requires flexibility," *id.* at 4a, and "all RCAs must be willing to work weekends and holidays," *id.* at 36a. Groff's religious beliefs prohibit him from working on Sundays, though, which initially held no problem as RCA's did not work these days. *Delivery: Monday through Saturday since 1863*, at 2 (June 2009). This changed when USPS signed a deal with Amazon in 2013 to deliver packages on Sundays. *Pet. App.* 36a. When this deal was implemented in Groff's office, he was initially exempted due to the station being "relatively

large" and "had sufficient carriers available for Sunday delivery." *Id.* at 6a. Later though, USPS and the RCA union entered an MOU regarding holiday and Sunday deliveries, which held that any post office must first try to staff deliveries on these days with any Assistant Rural Carriers or RCA's who had volunteered for this work. *Pet. App.* 5a-6a. If this does not work, USPS requires other part-time carriers to serve on a rotating basis. *Id.* at 6a, which is critical considering during peak seasons, each post office must schedule its carriers and deliver its own packages, without aid, on Sundays and holidays. *J.A.* 150-151. When the MOU went into effect, Groff was told he had to join the Sunday rotation, but instead, he transferred to the smaller Holtwood Pennsylvania office to avoid Sunday work. *Ibid.* Holtwood's postmaster attempted to find other carriers to cover Groff's shifts, as he claimed that it was "the only accommodations that would not 'impact operations.'" *Id.* at 7a. Another RCA initially volunteered but, due to an injury, was unable to continue service. *Ibid.* This forced Holtwood's only other RCA to "bear the burden of Amazon Sundays alone during the 2017 peak season." *Ibid.* And even the Holtwood Postmaster himself to pick up deliveries when no other RCA was available. *Id.* at 8a. According to Holtwood's postmaster, Groff's absences created a 'tense atmosphere' among the other RCAs" and led to "resentment toward management." *Pet. App.* 8a and even lead to other RCAs transferring or resigning from Holtwood's office specifically due to the situation. *Ibid.* One RCA Union member even submitted a grievance, claiming he had been forced to work on Sundays during the non-peak season to cover for Groff, directly violating MOU. *Id.* at 8a n.8; *J.A.* 98-142. Groff eventually resigned in 2019 but ultimately did so, having missed 24 shifts that no employee could fill in for him. *Pet. App.* 21a. Petitioner Groff immediately filed suit with the USPS, claiming they had violated Title VII, with the district court ruling that the "desired accommodation of being skipped over in the schedule every Sunday" would impose an undue

hardship upon USPS. Id. at 55a; see id. at 55a-60a. The Court of Appeals affirmed, explaining that Groff's Sunday exemption would have imposed an undue hardship on USPS's operations because "[t]he impact on the workplace * * * far surpasses a de minimis burden." Id. at 22a n.18

Question Presented

The question, as presented to the Court, is whether an employer may demonstrate "undue hardship on the conduct of the employer's business," under Title VII in the circumstances at bar where the requested accommodation burdens the employee's co-workers rather than the business itself.

ARGUMENT

The Accommodation's Effect on Employees Places an Undue Hardship Upon the Employer's Business

Title VII specifically asks whether the accommodation would impose an undue hardship "on the conduct of the employer's business." 42 U.S.C. 2000e(j)

The conduct of the employer's business includes the action and management of a said business. Essentially, it is the process in which the employer can effectively control operations. To complete this, employers must be able to oversee the individuals conducting the business and ensure they can do so effectively.

Groff's religious accommodations negatively affected how the USPS of Holtwood was conducted because it interfered with other employees' ability to accomplish their work, ultimately disrupting the effective operation of the business.

This was shown in a myriad of ways. First, Groff's absence on Sundays forced his responsibilities upon other coworkers and the postmaster himself Id. at 8a, taking away time

from effectively performing their jobs. Furthermore, four RCA shifts were left uncovered Pet. App. 21a, meaning the postage meant to be delivered was either late or undelivered.

The EEOC codifies this logic in Title VII, stating that an undue hardship occurs when an accommodation "infringes on other employees' job rights or benefits" or "causes coworkers to carry the accommodated IV(B)(2); see id. § 12-IV(B)(3),

The Court of Appeals affirmed this definition, in which it ruled that undue hardships are "negative impacts on the employer's operations, such as on productivity or quality, personnel, and overtime costs, increased workload on other employees, and reduced employee morale." *Ibid.*

As previously seen, Groff's accommodations negatively affected the USPS's operations, which by these definitions, constitutes an undue hardship upon the USPS.

The consequences of Groff's accommodations also created a 'tense atmosphere' among the other RCAs," which led to "resentment toward management." Pet. App. 8a

Although the EEOC considers that "...subjecting coworkers to a hostile work environment will generally constitute undue hardship environment to be an undue hardship" Id. § 12-IV(B)(4), and the Court of Appeals pointed out that "[a] business may be compromised, in part," by "poor morale among the workforce and disruption of workflow." Id. at 22a n.19; see id. at 24a n.20., the tense atmosphere and resentment towards management do not equate to undue hardship.

Still, these circumstances caused multiple USPS employees to leave the company, which according to the ruling in *Peterson v. Hewlett-Packard Co. (2004)*, accommodations that "allow[] actions that demean or degrade * * * members of [the] workforce" or "deprive them of contractual or other statutory rights" will "create[] undue hardship" for the employer by

"inhibit[ing] its efforts to attract and retain a qualified, diverse workforce." *Peterson*, 358 F.3d 599, 607-608 (9th Cir. 2004)

Ultimately, Groff's accommodations created the set of circumstances in which other RCAs were deprived of their contractual rights and left the company. This put a strain upon the already small and struggling Holtwood post office and surly placed an undue hardship on USPS in maintaining an adequate labor force, something necessary for conducting the business.

USPS's Shift Rotation Rules Are Neutral and Need Not Make Religious Exceptions

This Court's ruling in *Cantwell v. Connecticut* (1947) established the Valid Secular Policy test. It is utilized in the analysis of policy. It holds that if it serves a legitimate nonreligious governmental purpose, not directed at any religion, then it is allowed to remain even if it has an effect that conflicts with religious practice. (*Cantwell*)

The petitioner claims that the *Hardison* ruling allows for "employer rules to facially treat religious and nonreligious employees equally while discriminating in effect against religious employees." (*Petitioner's Brief*, 13). When examining USPS's "rules" that the petitioner claims are discriminatory through the Secular Policy Test, it is evident that this is not the case.

The crux of the petitioner's issue is that they were punished for disobeying the Sunday shift rotation. The rotation was brought into effect by an MOU between the USPS and the RCA Union, an organization that represents and strives to protect the rights of RCAs. The rotation affects all employees and does not target or specify any religious group, and it was created for the nonreligious purpose of continuing operations during USPS's "busy season." Considering all of the factors align with the Secular Policy Test, the Court's past jurisprudence would hold USPS does not violate the test and may remain even if it interferes with the petitioner's religious practice.

This Court's ruling in the *Employment Division, Department of Human Resources of Oregon v. Smith* (1990) would concur, stating that, "We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law..." (*Smith, 1990*).

Indeed, in the *Smith* case, the peyote ban was a religiously neutral law, and Smith was punished for violating it. In the same way, the current case demonstrates USPS's rotation rules as religiously neutral. The petitioner's absences, which violated the neutral law, were punished appropriately in concurrence with the Secular Policy Test and the *Smith* ruling.

The use of the *Smith* decision with the Secular policy test must be distinguished from the *Sherbert* ruling, which would not apply to this situation.

The ruling in *Sherbert v. Verner* (1963) created the compelling interest test. The state must have a valid compelling interest and show that a law is narrowly tailored before the restriction of civil liberties (*Sherbert*).

The rotation and Sunday shift rules created by USPS do not need a compelling interest to restrict these liberties because they are generally applicable rules. In this way, *Sherbert* does not apply; instead, the Rational Basis standard established in *Smith* should be used. Indeed, USPS has a rational basis for creating the shift rotation, which is to streamline the operation of the business, and therefore does not exempt the religious from these rules.

From the evidence present, it should be apparent that USPS has experienced an undue hardship on the conduct of their business through accommodating petitioner Groff. The respondent asks that the court affirm this judgement by the Court of Appeals.

Respectfully submitted,

-Callum Holley

