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Title VII - Eighth Circuit Holds that Reasonable Accommodation Language Does Not Require Employers to Eliminate Conflict between Work and Religious Beliefs

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TITLE VII—EIGHTH CIRCUIT HOLDS THAT "REASONABLE ACCOMMODATION" LANGUAGE DOES NOT REQUIRE EMPLOYERS TO ELIMINATE CONFLICT BETWEEN WORK AND RELIGIOUS BELIEFS

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TITLE VII of the Civil Rights Act of 1964 prohibits employers from discharging any employee on the basis of that employee's religion.[1] The statute further explains that employers must accommodate "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."[2] Unfortunately for employers, the statute provides very little guidance regarding what level of accommodation is required when they are faced with a real conflict. Presented with the problem of defining the concept of reasonable accommodation, the Eighth Circuit concluded that Title VII does not necessarily require an employer to eliminate the conflict between work and an employee's religious beliefs.[3] In some cases, such a requirement would force an employer to violate a collective bargaining agreement (CBA) or ignore the rights of other employees.[4] While the Eighth Circuit somewhat undermined its conclusion by ultimately finding for the employee, *Sturgill v. United Parcel Service* acknowledges that after looking at the totality of the circumstances, a court may determine that employees, as well as employers, must compromise in order to resolve workplace conflicts.[5]

The "reasonable accommodation" question arose in May 2004 when Sturgill joined the Seventh Day Adventist Church, which prohibited him from working between sundown Friday and sundown Saturday.[6] As a

1. 42 U.S.C. § 2000e-2(a)(1) (2006).
2. 42 U.S.C. § 2000e(j) (2006).
3. Sturgill v. United Parcel Serv., Inc., 512 F.3d 1024, 1033 (8th Cir. 2008).
4. *Id.*
5. *Id.*
6. *Id.* at 1028.

UPS driver, Sturgill's shift was not over until all of the packages that had been pre-loaded in his truck that morning had been delivered.[7] During the holiday season, this practice often required drivers to work long days, so Sturgill requested that UPS exempt him from work after sundown on Fridays, and as a compromise, he offered several alternative suggestions.[8] His request was reviewed by the Labor Relations and Human Resources managers who determined that such accommodations would be inconsistent with UPS's operations and with the CBA between UPS and the International Brotherhood of Teamsters.[9] The conflict could have been eliminated by transferring Sturgill to a different job, but none were available at the time, and any future job openings would be filled according to a seniority system.[10] Although UPS denied Sturgill's request, his immediate shift supervisor frequently accommodated him by moving his packages to other drivers so Sturgill could finish by sundown.[11] This informal accommodation worked until December 17, 2004 when Sturgill could not finish his deliveries and no other drivers were available to help him.[12] Sturgill quit working at sundown, leaving thirty-five packages undelivered, and UPS terminated him for abandoning his job.[13]

At trial, Sturgill argued two theories of liability under Title VII of the Civil Rights Act of 1964.[14] He claimed that UPS discriminated against him because of his religion, and alternatively, that he was terminated because UPS failed to reasonably accommodate his religious beliefs.[15] The jury found for UPS on the discrimination claim, but found for Sturgill on the claim that UPS failed to reasonably accommodate his religious beliefs, awarding him $103,722.25 in compensatory damages and $207,444.50 in punitive damages.[16] The district court additionally awarded Sturgill $134,838.37 in attorneys' fees and an injunction requiring UPS to accommodate his religious beliefs in the future.[17] UPS appealed the decision, arguing that the district court wrongfully instructed the jury that "an accommodation is reasonable if it *eliminates* the conflict between the Plaintiff's religious beliefs and Defendant's work requirements and reasonably permits Plaintiff to continue to be employed by Defendant."[18]

The Eighth Circuit thus faced the issue of whether a reasonable accommodation must eliminate or simply minimize the conflict between work obligations and an employee's religious beliefs. Rejecting both of the stat-

7. *Id.* at 1027.
8. *Id.* at 1028.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 1029.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* at 1027.
17. *Id.*
18. *Id.* at 1030.

utory interpretations argued by Sturgill and UPS, the Eighth Circuit held that "[w]hat is reasonable depends on the totality of the circumstances and therefore might, or might not, require elimination of a particular, fact-specific conflict."[19] In making this decision, the court recognized that certain factors, such as CBAs and the rights of other employees, prevented them from mandating that employers must always eliminate the conflict between work and one employee's religious beliefs.[20] In some cases, eliminating a religious conflict would impose an undue hardship on employers by requiring them to take actions inconsistent with otherwise valid employment agreements.[21] Instead, the reasonableness of an accommodation "turns on fact-intensive issues such as work demands, the strength and nature of the employee's religious conviction, the terms of an applicable CBA, and the contractual rights and workplace attitudes of co-workers."[22] Imposing an arbitrary rule on reasonable accommodations could result in the unequal treatment of employees; therefore, the Eighth Circuit held the district court incorrectly instructed the jury.[23] However, the court lessens the impact of this decision by determining that regardless of the reasonable accommodation dispute, the jury's verdict was justified by Sturgill's evidence of a "one-time failure to accommodate resulting in the severe sanction of termination" and the UPS's failure to prove that further accommodation would have caused undue hardship.[24]

In holding that a reasonable accommodation is not necessarily required to eliminate all conflicts between work and religious beliefs, the Eighth Circuit primarily relied on two United States Supreme Court cases that support this interpretation of Title VII.[25] In *Hardison*, a factually similar case, Trans World Airlines (TWA) fired an employee for insubordination when he refused to work on Saturdays for religious reasons.[26] Although TWA attempted to accommodate him, it could not change his shift without violating the union's seniority system, nor could it allow him to work four days a week without impairing airline operations.[27] The Supreme Court held that while employers have a Title VII duty to accommodate an employee's religious beliefs, it would result in undue hardship to require them to do so in a manner that would be "inconsistent with the otherwise valid [collective bargaining] agreement" or that would deprive other employees of their seniority rights.[28] The second Supreme Court decision relied upon by the Eighth Circuit held that an employer is not required to accept a reasonable accommodation proposed by an em-

19. *Id.*
20. *Id.* at 1033.
21. Trans World Airlines v. Hardison, 432 U.S. 63, 79 (1977).
22. *Sturgill*, 512 F.3d at 1033.
23. *Id.*
24. *Id.*
25. *Id.* at 1030-33 (relying on Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 68 (1986); *Hardison*, 432 U.S. at 79).
26. 432 U.S. at 69.
27. *Id* at 68.
28. *Id.* at 79

ployee.[29] In *Ansonia*, the Supreme Court concluded that an employer reasonably accommodated an employee by requiring him to take unpaid leave for holy day observance even though the employee preferred a different accommodation.[30] According to the Eighth Circuit, the *Ansonia* holding did not suggest "that an accommodation, to be reasonable as a matter of law, *must* eliminate any religious conflict."[31] Instead, the Supreme Court looked to the legislative history of Title VII that supported "flexibility" and "bilateral cooperation" between employers and employees when reconciling the employee's religion with the employer's business needs.[32] Based on this idea of compromise, the Eighth Circuit determined that "the [Supreme] Court's reference to 'elimina[ting] the conflict' was not intended to pronounce a rule that *all* employees—absent undue hardship—must receive accommodations that eliminate any conflict between religion and work."[33]

In addition to these two Supreme Court cases, the Eighth Circuit looked to other cases in the Eighth, Third, and Fifth Circuits that were also inconsistent with Sturgill's argument and dismissed opposing decisions from the Second, Sixth, Seventh, and Ninth Circuits.[34] The Eighth Circuit found support for the proposition that an employer's accommodation should not provide special treatment at the expense of other employees in one of its own previous holdings.[35] *Wilson* held that requiring an employer to instruct employees that they must tolerate another employee's highly graphic, offensive, and religiously-motivated anti-abortion button was contrary to the purpose of religious accommodation.[36] Similarly, the Third and Fifth Circuits have held that transferring an employee to another position is reasonable as a matter of law, even if the transfer only reduces the possibility of religious conflict, instead of eliminating it.[37] The Fifth and Eighth Circuits have consistently found for employers when allowing an employee not to work on the Sabbath would violate a CBA, a seniority system, or company scheduling procedures.[38] Oddly, although the Second and Seventh Circuits have declared that a reasonable accommodation must eliminate any religion-work conflict, the courts in those circuits actually affirmed judgments for employers.[39] The other circuits agreeing with the Second and Seventh Circuits simply ignore *An-*

29. *Ansonia*, 479 U.S. at 68.
30. *Id.* at 64, 69.
31. *Sturgill*, 512 F.3d at 1031.
32. *Ansonia*, 479 U.S. at 69.
33. *Sturgill*, 512 F.3d at 1031.
34. *Id.* at 1031-33.
35. Wilson v. U.S. W. Commc'ns, 58 F.3d 1337, 1341 (8th Cir. 1995).
36. *Id.*
37. Bruff v. N. Miss. Health Servs., 244 F.3d 495, 501 (5th Cir. 2001); Shelton v. Univ. of Med. & Dentistry, 223 F.3d 220, 226 (3d Cir. 2000).
38. Mann v. Frank, 7 F.3d 1365, 1369 (8th Cir. 1993); Cook v. Chrysler Corp., 981 F.2d 336, 338 (8th Cir. 1992); Brener v. Diagnostic Ctr. Hosp., 671 F.2d 141, 145-46 (5th Cir. 1982).
39. Cosme v. Henderson, 287 F.3d 152, 159 (2d Cir. 2002); Wright v. Runyon, 2 F.3d 214, 217 (7th Cir. 1993).

sonia and rely instead on their own decisions predating that Supreme Court opinion.[40] For these reasons, the Eighth Circuit concluded that in determining the reasonableness of an employer's accommodation, the court must look at the totality of the circumstances, instead of only at whether the religious conflict was eliminated.[41]

Although it may initially seem counterintuitive, by holding that an employer may not be able to eliminate religious conflicts in every situation, the Eighth Circuit actually fulfills the purpose of Title VII by prohibiting unequal treatment on the basis of religion. CBAs and seniority systems are religion-neutral ways of "minimizing the number of occasions when an employee must work on a day that he would prefer to have off."[42] These agreements, which "lie[ ] at the core of our national labor policy," are "aimed at effecting workable and enforceable agreements between management and labor."[43] They encourage bilateral cooperation by requiring both employers and employees to make compromises in order to create a fair and impartial system of determining shifts and time off.[44] Like Title VII, they are put in place with the goal of treating all employees as equally as possible, whether they are members of a religious minority or not. Forcing employers to ignore these agreements and make special exceptions for certain groups of employees defeats the purpose of collective bargaining. As the Supreme Court noted in *Hardison*: "It would be anomalous to conclude that by 'reasonable accommodation' Congress meant that an employer must deny the shift and job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others."[45] Therefore, courts should not arbitrarily decide that employers must always eliminate the conflict between work and religion to make a reasonable accommodation because there are other circumstances that must be considered. Because the Supreme Court has stated that an employer should not have to discriminate against one employee to accommodate another, the Eighth Circuit correctly held that it was improper to instruct a jury that a reasonable accommodation must always eliminate the religious conflict.[46]

But this decision did not ultimately change the outcome of *Sturgill*. Instead, the Eighth Circuit made a decision on the issue but refused to apply its new rule to the facts of the case—essentially the very thing it earlier criticized the Second and Seventh Circuits for doing.[47] The Eighth Circuit undermined its conclusion on reasonable accommodations by finding for Sturgill. Although UPS determined that the only way it could

40. EEOC v. Townley Eng'g & Mfg Co., 859 F.2d 610, 615 (9th Cir. 1988); Smith v. Pyro Mining Co., 827 F.2d 1081, 1085 (6th Cir. 1987).
41. *Sturgill*, 512 F.3d at 1033.
42. *Hardison*, 432 U.S. at 78.
43. *Id.* at 79.
44. *Sturgill*, 512 F.3d at 1031, 1033.
45. *Hardison*, 432 U.S. at 81.
46. *Sturgill*, 512 F.3d at 1033.
47. *Id.* at 1032-33.

accommodate Sturgill within the guidelines of the CBA was to offer him the chance to bid on another job as it became available, the Eighth Circuit held that UPS could have explored "whether there were additional procedures . . . that could be employed to help Sturgill avoid Friday work conflicts in the interim."[48] Disregarding its own directive to consider the totality of the circumstances, the court ignored testimony that Sturgill's supervisor informally accommodated him to the best of his ability, inconveniencing other drivers in the process.[49] The Eighth Circuit also incorrectly concluded that UPS failed to present "real rather than speculative" evidence that accommodating Sturgill would have been an undue hardship.[50] Yet, in addition to noting the very real conflicts arising with the CBAs and seniority system, UPS further argued that accommodating Sturgill would have required UPS to force less efficient drivers to work excessive overtime.[51] Title VII does not require an employer to discriminate against some employees in order to enable others to observe their Sabbath, yet the Eighth Circuit essentially insisted that UPS should have done so in order to meet the burden of undue hardship. Title VII does not actually require employers to suffer the undue hardship. By finding that the jury instruction was not a reversible error, the Eighth Circuit refused to stand by its decision that a reasonable accommodation does not have to eliminate all religious conflicts.[52]

An initial reading of the Eighth Circuit's decision may seem to give employers the upper hand and allow them to ignore religious conflicts in the presence of valid CBAs and seniority systems. In his *Hardison* dissent, Justice Marshall argued that allowing employers to hide behind CBAs "holds, in essence, that although the EEOC regulations and the Act state that an employer must make reasonable adjustments in his work demands to take account of religious observances, the regulation and the Act do not really mean what they say."[53] *Sturgill* does not go that far. Instead, it demonstrates that even when the court considers additional circumstances, it is still exceedingly difficult for employers to avoid eliminating religious conflicts. In fact, the Eighth Circuit noted that "there may be many situations in which the *only* reasonable accommodation is to eliminate the religious conflict altogether."[54] *Sturgill* does not give employers the ability to get around Title VII; instead, it merely suggests that there are often other factors involved that make an arbitrary rule impractical. *Sturgill* simply acknowledged that while employers are always required to make serious efforts to reasonably accommodate their employees' religious beliefs, courts should have the freedom to require employees, in some cases, to make accommodations as well.

48. *Id.* at 1033.
49. *Id.* at 1028.
50. *Id.* at 1033.
51. *Id.* at 1029.
52. *Id.* at 1033 n.4.
53. *Hardison*, 432 U.S. 86-87.
54. *Sturgill*, 512 F.3d 1033 (emphasis added).