

BONA FIDE SENIORITY SYSTEM *USUALLY* TRUMPS ADA ACCOMMODATION REQUEST

By Eric R. Miller and Paul D. Myrick

In *U.S. Airways, Inc. v. Barnett*, the United States Supreme Court recently held that an employer's reliance on an established seniority system usually trumps a disabled worker's request for a job assignment as a reasonable accommodation under the Americans with Disability Act ("ADA"). The decision offers some guidance for employers whenever a disabled worker requests a job assignment as an accommodation, and that request conflicts with the employer's established job assignment policies.

After Robert Barnett injured his back in 1990, he invoked his seniority rights under U.S. Airways' long-standing seniority system to obtain a transfer to a less physically demanding job in the mailroom. Under the seniority system, Barnett's new job, like many others, periodically became open for bids based on seniority. In 1992, Mr. Barnett learned that two co-workers with more seniority intended to bid on his job, so he asked U.S. Airways to accommodate his disability-related limitations by making an exception to the company's seniority system thereby allowing him to remain in his mailroom job. U.S. Airways declined, Mr. Barnett lost his job, and he sued U.S. Airways under the ADA.

As regular readers of these Alerts know, the ADA requires an employer to make "reasonable accommodations" to enable an otherwise qualified individual with a disability to perform essential job duties, unless the employer can demonstrate that a requested accommodation would impose undue hardship on the operation of the employer's business. Reassignment to a vacant job is one potential accommodation. In *U.S. Airways*, the Supreme Court addressed the "potential conflict" between: (1) the interests of a disabled worker who seeks assignment to a particular job as a "reasonable accommodation," and (2) the interests of co-workers with superior rights to bid for that job under the employer's seniority system. Quite simply, does the disabled worker's accommodation request trump the seniority system?

The Supreme Court concluded that, in most cases (or, as the Court put it, "in the run of the cases"), the answer is "no." The Court held that a disabled worker's request for a job assignment that would violate an established seniority system (regardless whether the seniority system is included in a collective bargaining agreement with a union, or is unilaterally established by the employer) is not a "reasonable accommodation." Thus, the employer is entitled to apply its

seniority system, rather than according a special preference to the disabled worker.

However, the Supreme Court further held that the disabled worker does have the opportunity to show that "special circumstances" exist that would warrant granting the requested accommodation (i.e., job assignment) despite the seniority system. For example, the disabled worker may be able to show that the employer had retained the right to bypass its seniority system and had done so frequently in the past, or that the seniority system includes numerous exceptions such that one more exception would be "reasonable" under the circumstances.

Does the Supreme Court's decision apply to other disability-neutral employment policies that control job assignments? For example, can an employer follow a policy of awarding open jobs to the most qualified candidate? Presumably so. Indeed, most lower courts have held that an employer can choose the most qualified candidate so long as that decision is made without regard to disability or the need for an accommodation — quite simply, the employer is not required to disregard a disability-neutral policy and give a special preference to a less qualified disabled worker.

However, whether a disabled worker's request for a particular job assignment as an accommodation trumps a disability-neutral policy under specific circumstances (or vice versa) is a decision the employer must make on a case-by-case basis. Consequently, any such request should be reviewed carefully and considered in the context of the particular circumstance.

ADAMS AND REESE LLP represents employers in all phases of employee relations, including defending claims arising under state and federal labor and employment laws; assisting employers in drafting and seeking enforcement of employment contracts, policies and handbooks; and providing ongoing advice, counsel and training to clients regarding employment issues.

This Alert merely provides information about recent legal developments and is not to be considered legal advice or a legal opinion. Such can only be given after careful consideration of the facts unique to any situation. Legal counsel should always be consulted for further clarification or investigation of the employer's particular circumstances.

ADAMS AND REESE LLP[®]

Labor and Employment Team

Baton Rouge
451 Florida Street, 19th Floor
Bank One Centre, North Tower, Baton Rouge, LA 70801
(225) 336-5200
Robert C. Schmidt
Eric R. Miller

Houston
4400 One Houston Center
1221 McKinney Street, Houston, TX 77010
(713) 652-5151
Erin H. Patterson
JoAnne Ray

Jackson
111 Capitol Building, Suite 350
111 E. Capital Street, Jackson, MS 39201
(601) 353-3234
James A. Keith
Harvey L. Fiser
Elizabeth L. Maron
Mark S. Johnson

Mobile
1 St. Louis Centre, Suite 4500, Mobile, AL 36602
(251) 433-3234
Paul D. Myrick
Bradley R. Byrne
Kelly C. Woodford
Elizabeth Rehm
R. Scott Hetrick

New Orleans
4500 One Shell Square, New Orleans, LA 70139
(504) 581-3234
Brooke Duncan, III
Leslie A. Lanusse
Philip A. Franco
William J. Kelly, III
Janis van Meerveld
Patricia Adams
Jennifer M. Neil

Adams and Reese LLP
701 Poydras Street
4500 One Shell Square
New Orleans, LA 70139