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 BREYER delivered the opinion of the Court.

The Americans with Disabilities Act of 1990 (ADA or Act), 104 Stat. 328, 42 U. S. C. §12101 *et seq*. (1994 ed. and Supp. V), prohibits an employer from discriminating against an "individual with a disability" who, with "reasonable accommodation," can perform the essential functions of the job. §§12112(a) and (b) (1994 ed.). This case, arising in the context of summary judgment, asks us how the Act resolves a potential conflict between: (1) the interests of a disabled worker who seeks assignment to a particular position as a "reasonable accommodation," and (2) the interests of other workers with superior rights to bid for the job under an employer's seniority system. In such a case, does the accommodation demand trump the seniority system?

In our view, the seniority system will prevail in the run of cases. As we interpret the statute, to show that a requested accommodation conflicts with the rules of a seniority system is ordinarily to show that the accommodation is not "reasonable." Hence such a showing will entitle an employer/defendant to summary judgment on the question—unless there is more. The plaintiff remains free to

present evidence of special circumstances that make "reasonable" a seniority rule exception in the particular case. And such a showing will defeat the employer's demand for summary judgment. Fed. Rule Civ. Proc. 56(e).

I

In 1990, Robert Barnett, the plaintiff and respondent here, injured his back while working in a cargo-handling position at petitioner US Airways, Inc. He invoked seniority rights and transferred to a less physically demanding mailroom position. Under US Airways' seniority system, that position, like others, periodically became open to seniority-based employee bidding. In 1992, Barnett learned that at least two employees senior to him intended to bid for the mailroom job. He asked US Airways to accommodate his disability-imposed limitations by making an exception that would allow him to remain in the mailroom. After permitting Barnett to continue his mailroom work for five months while it considered the matter, US Airways eventually decided not to make an exception. And Barnett lost his job.

Barnett then brought this ADA suit claiming, among other things, that he was an "individual with a disability" capable of performing the essential functions of the mailroom job, that the mailroom job amounted to a "reasonable accommodation" of his disability, and that US Airways, in refusing to assign him the job, unlawfully discriminated against him. US Airways moved for summary judgment. It supported its motion with appropriate affidavits, Fed. Rule Civ. Proc. 56, contending that its "well-established" seniority system granted other employees the right to obtain the mailroom position.

The District Court found that the undisputed facts about seniority warranted summary judgment in US Airways' favor. The Act says that an employer who fails to make "reasonable accommodations to the known physical or mental limitations of an [employee] with a disability"

discriminates "*unless*" the employer "can demonstrate that the accommodation would impose an *undue hardship* on the operation of [its] business." 42 U. S. C. §12112(b)(5)(A) (emphasis added). The court said:

> "[T]he uncontroverted evidence shows that the USAir seniority system has been in place for 'decades' and governs over 14,000 USAir Agents. Moreover, seniority policies such as the one at issue in this case are common to the airline industry. Given this context, it seems clear that the USAir employees were justified in relying upon the policy. As such, any significant alteration of that policy would result in undue hardship to both the company and its non-disabled employees." App. to Pet. for Cert. 96a.

An en banc panel of the United States Court of Appeals for the Ninth Circuit reversed. It said that the presence of a seniority system is merely "a factor in the undue hardship analysis." 228 F. 3d 1105, 1120 (2000). And it held that "[a] case-by-case fact intensive analysis is required to determine whether any particular reassignment would constitute an undue hardship to the employer." *Ibid*.

US Airways petitioned for certiorari, asking us to decide whether

> "the [ADA] requires an employer to reassign a disabled employee to a position as a 'reasonable accommodation' even though another employee is entitled to hold the position under the employer's bona fide and established seniority system." Brief for Petitioner i.

The Circuits have reached different conclusions about the legal significance of a seniority system. Compare 228 F. 3d, at 1120, with *EEOC* v. *Sara Lee Corp.*, 237 F. 3d 349, 354 (CA4 2001). We agreed to answer US Airways' question.

II

In answering the question presented, we must consider the following statutory provisions. First, the ADA says that an employer may not "discriminate against a qualified individual with a disability." 42 U. S. C. §12112(a). Second, the ADA says that a "qualified" individual includes "an individual with a disability who, *with* or without *reasonable accommodation*, can perform the essential functions of" the relevant "employment position." §12111(8) (emphasis added). Third, the ADA says that "discrimination" includes an employer's "*not making reasonable accommodations* to the known physical or mental limitations of an otherwise qualified . . . employee, *unless* [the employer] can demonstrate that the accommodation would impose an *undue hardship* on the operation of [its] business." §12112(b)(5)(A) (emphasis added). Fourth, the ADA says that the term "'reasonable accommodation' may include . . . reassignment to a vacant position." §12111(9)(B).

The parties interpret this statutory language as applied to seniority systems in radically different ways. In US Airways' view, the fact that an accommodation would violate the rules of a seniority system always shows that the accommodation is not a "reasonable" one. In Barnett's polar opposite view, a seniority system violation never shows that an accommodation sought is not a "reasonable" one. Barnett concedes that a violation of seniority rules might help to show that the accommodation will work "undue" employer "hardship," but that is a matter for an employer to demonstrate case by case. We shall initially consider the parties' main legal arguments in support of these conflicting positions.

A

US Airways' claim that a seniority system virtually always trumps a conflicting accommodation demand rests

primarily upon its view of how the Act treats workplace "preferences." Insofar as a requested accommodation violates a disability-neutral workplace rule, such as a seniority rule, it grants the employee with a disability treatment that other workers could not receive. Yet the Act, US Airways says, seeks only "equal" treatment for those with disabilities. See, *e.g.,* 42 U. S. C. §12101(a)(9). It does not, it contends, require an employer to grant preferential treatment. Cf. H. R. Rep. No. 101–485, pt. 2, p. 66 (1990); S. Rep. No. 101–116, pp. 26–27 (1989) (employer has no "obligation to prefer *applicants* with disabilities over other *applicants*" (emphasis added)). Hence it does not require the employer to grant a request that, in violating a disability-neutral rule, would provide a preference.

While linguistically logical, this argument fails to recognize what the Act specifies, namely, that preferences will sometimes prove necessary to achieve the Act's basic equal opportunity goal. The Act requires preferences in the form of "reasonable accommodations" that are needed for those with disabilities to obtain the *same* workplace opportunities that those without disabilities automatically enjoy. By definition any special "accommodation" requires the employer to treat an employee with a disability differently, *i.e.,* preferentially. And the fact that the difference in treatment violates an employer's disability-neutral rule cannot by itself place the accommodation beyond the Act's potential reach.

Were that not so, the "reasonable accommodation" provision could not accomplish its intended objective. Neutral office assignment rules would automatically prevent the accommodation of an employee whose disability-imposed limitations require him to work on the ground floor. Neutral "break-from-work" rules would automatically prevent the accommodation of an individual who needs additional breaks from work, perhaps to permit

medical visits. Neutral furniture budget rules would automatically prevent the accommodation of an individual who needs a different kind of chair or desk. Many employers will have neutral rules governing the kinds of actions most needed to reasonably accommodate a worker with a disability. See 42 U. S. C. §12111(9)(b) (setting forth examples such as "job restructuring," "part-time or modified work schedules," "acquisition or modification of equipment or devices," "and other similar accommodations"). Yet Congress, while providing such examples, said nothing suggesting that the presence of such neutral rules would create an automatic exemption. Nor have the lower courts made any such suggestion. Cf. *Garcia-Ayala* v. *Lederle Parenterals, Inc.*, 212 F. 3d 638, 648 (CA1 2000) (requiring leave beyond that allowed under the company's own leave policy); *Hendricks-Robinson* v. *Excel Corp.*, 154 F. 3d 685, 699 (CA7 1998) (requiring exception to employer's neutral "physical fitness" job requirement).

In sum, the nature of the "reasonable accommodation" requirement, the statutory examples, and the Act's silence about the exempting effect of neutral rules together convince us that the Act does not create any such automatic exemption. The simple fact that an accommodation would provide a "preference"—in the sense that it would permit the worker with a disability to violate a rule that others must obey—cannot, *in and of itself*, automatically show that the accommodation is not "reasonable." As a result, we reject the position taken by US Airways and JUSTICE SCALIA to the contrary.

US Airways also points to the ADA provisions stating that a "'reasonable accommodation' may include . . . reassignment to a *vacant* position." §12111(9)(B) (emphasis added). And it claims that the fact that an established seniority system would assign that position to another worker automatically and always means that the position is not a "vacant" one. Nothing in the Act, however, sug-

gests that Congress intended the word "vacant" to have a specialized meaning. And in ordinary English, a seniority system can give employees seniority rights allowing them to bid for a "vacant" position. The position in this case was held, at the time of suit, by Barnett, not by some other worker; and that position, under the US Airways seniority system, became an "open" one. Brief for Petitioner 5. Moreover, US Airways has said that it "reserves the right to change any and all" portions of the seniority system at will. Lodging of Respondent 2 (US Air Personnel Policy Guide for Agents). Consequently, we cannot agree with US Airways about the position's vacancy; nor do we agree that the Act would automatically deny Barnett's accommodation request for that reason.

B

Barnett argues that the statutory words "reasonable accommodation" mean only "effective accommodation," authorizing a court to consider the requested accommodation's ability to meet an individual's disability-related needs, and nothing more. On this view, a seniority rule violation, having nothing to do with the accommodation's effectiveness, has nothing to do with its "reasonableness." It might, at most, help to prove an "undue hardship on the operation of the business." But, he adds, that is a matter that the statute requires the employer to demonstrate, case by case.

In support of this interpretation Barnett points to Equal Employment Opportunity Commission (EEOC) regulations stating that "reasonable accommodation means . . . . [m]odifications or adjustments . . . that *enable* a qualified individual with a disability to perform the essential functions of [a] position." 29 CFR §1630(o)(ii) (2001) (emphasis added). See also H. R. Rep. No. 101–485, pt. 2, at 66; S. Rep. No. 101–116, at 35 (discussing reasonable accommodations in terms of "effectiveness," while discussing

costs in terms of "undue hardship"). Barnett adds that any other view would make the words "reasonable accommodation" and "undue hardship" virtual mirror images—creating redundancy in the statute. And he says that any such other view would create a practical burden of proof dilemma.

The practical burden of proof dilemma arises, Barnett argues, because the statute imposes the burden of demonstrating an "undue hardship" upon the employer, while the burden of proving "reasonable accommodation" remains with the plaintiff, here the employee. This allocation seems sensible in that an employer can more frequently and easily prove the presence of business hardship than an employee can prove its absence. But suppose that an employee must counter a claim of "seniority rule violation" in order to prove that an "accommodation" request is "reasonable." Would that not force the employee to prove what is in effect an absence, *i.e.*, an absence of hardship, despite the statute's insistence that the employer "demonstrate" hardship's presence?

These arguments do not persuade us that Barnett's legal interpretation of "reasonable" is correct. For one thing, in ordinary English the word "reasonable" does not mean "effective." It is the word "accommodation," not the word "reasonable," that conveys the need for effectiveness. An *ineffective* "modification" or "adjustment" will not *accommodate* a disabled individual's limitations. Nor does an ordinary English meaning of the term "reasonable accommodation" make of it a simple, redundant mirror image of the term "undue hardship." The statute refers to an "undue hardship on the operation of the business." 42 U. S. C. §12112(b)(5)(A). Yet a demand for an effective accommodation could prove unreasonable because of its impact, not on business operations, but on fellow employees—say because it will lead to dismissals, relocations, or modification of employee benefits to which an employer,

looking at the matter from the perspective of the business itself, may be relatively indifferent.

Neither does the statute's primary purpose require Barnett's special reading. The statute seeks to diminish or to eliminate the stereotypical thought processes, the thoughtless actions, and the hostile reactions that far too often bar those with disabilities from participating fully in the Nation's life, including the workplace. See generally §§12101(a) and (b). These objectives demand unprejudiced thought and reasonable responsive reaction on the part of employers and fellow workers alike. They will sometimes require affirmative conduct to promote entry of disabled people into the workforce. See *supra,* at 6. They do not, however, demand action beyond the realm of the reasonable.

Neither has Congress indicated in the statute, or elsewhere, that the word "reasonable" means no more than "effective." The EEOC regulations do say that reasonable accommodations "enable" a person with a disability to perform the essential functions of a task. But that phrasing simply emphasizes the statutory provision's basic objective. The regulations do not say that "enable" and "reasonable" mean the same thing. And as discussed below, no circuit court has so read them. But see 228 F. 3d, at 1122–1123 (Gould, J., concurring).

Finally, an ordinary language interpretation of the word "reasonable" does not create the "burden of proof" dilemma to which Barnett points. Many of the lower courts, while rejecting both US Airways' and Barnett's more absolute views, have reconciled the phrases "reasonable accommodation" and "undue hardship" in a practical way.

They have held that a plaintiff/employee (to defeat a defendant/employer's motion for summary judgment) need only show that an "accommodation" seems reasonable on its face, *i.e.,* ordinarily or in the run of cases. See, *e.g., Reed* v. *LePage Bakeries, Inc.*, 244 F. 3d 254, 259 (CA1

2001) (plaintiff meets burden on reasonableness by showing that, "at least on the face of things," the accommodation will be feasible for the employer); *Borkowski* v. *Valley Central School Dist.*, 63 F. 3d 131, 138 (CA2 1995) (plaintiff satisfies "burden of production" by showing "plausible accommodation"); *Barth* v. *Gelb*, 2 F. 3d 1180, 1187 (CADC 1993) (interpreting parallel language in Rehabilitation Act, stating that plaintiff need only show he seeks a "*method of accommodation* that is reasonable in the run of cases" (emphasis in original)).

Once the plaintiff has made this showing, the defendant/employer then must show special (typically case-specific) circumstances that demonstrate undue hardship in the particular circumstances. See *Reed, supra,* at 258–259 ("undue hardship inquiry focuses on the hardships imposed . . . in the context of the particular [employer's] operations'") (quoting *Barth, supra,* at 1187); *Borkowski, supra*, at 138 (after plaintiff makes initial showing, burden falls on employer to show that particular accommodation "would cause it to suffer an undue hardship"); *Barth, supra*, at 1187 ("undue hardship inquiry focuses on the hardships imposed . . . in the context of the particular agency's operations").

Not every court has used the same language, but their results are functionally similar. In our opinion, that practical view of the statute, applied consistently with ordinary summary judgment principles, see Fed. Rule Civ. Proc. 56, avoids Barnett's burden of proof dilemma, while reconciling the two statutory phrases ("reasonable accommodation" and "undue hardship").

III

The question in the present case focuses on the relationship between seniority systems and the plaintiff's need to show that an "accommodation" seems reasonable on its face, *i.e.,* ordinarily or in the run of cases. We must as-

sume that the plaintiff, an employee, is an "individual with a disability." He has requested assignment to a mailroom position as a "reasonable accommodation." We also assume that normally such a request would be reasonable within the meaning of the statute, were it not for one circumstance, namely, that the assignment would violate the rules of a seniority system. See §12111(9) ("reasonable accommodation" may include "reassignment to a vacant position"). Does that circumstance mean that the proposed accommodation is not a "reasonable" one?

In our view, the answer to this question ordinarily is "yes." The statute does not require proof on a case-by-case basis that a seniority system should prevail. That is because it would not be reasonable in the run of cases that the assignment in question trump the rules of a seniority system. To the contrary, it will ordinarily be unreasonable for the assignment to prevail.

A

Several factors support our conclusion that a proposed accommodation will not be reasonable in the run of cases. Analogous case law supports this conclusion, for it has recognized the importance of seniority to employee-management relations. This Court has held that, in the context of a Title VII religious discrimination case, an employer need not adapt to an employee's special worship schedule as a "reasonable accommodation" where doing so would conflict with the seniority rights of other employees. *Trans World Airlines, Inc.* v. *Hardison,* 432 U. S. 63, 79–80 (1977). The lower courts have unanimously found that collectively bargained seniority trumps the need for reasonable accommodation in the context of the linguistically similar Rehabilitation Act. See *Eckles* v. *Consolidated Rail Corp.*, 94 F. 3d 1041, 1047–1048 (CA7 1996) (collecting cases); *Shea* v. *Tisch*, 870 F. 2d 786, 790 (CA1 1989); *Carter* v. *Tisch*, 822 F. 2d 465, 469 (CA4 1987); *Jasany* v. *United States Postal Service,* 755 F. 2d 1244, 1251–1252 (CA6

1985). And several Circuits, though differing in their reasoning, have reached a similar conclusion in the context of seniority and the ADA. See *Smith* v. *Midland Brake, Inc.*, 180 F. 3d 1154, 1175 (CA10 1999); *Feliciano* v. *Rhode Island*, 160 F. 3d 780, 787 (CA1 1998); *Eckles, supra*, at 1047–1048. All these cases discuss *collectively bargained* seniority systems, not systems (like the present system) which are unilaterally imposed by management. But the relevant seniority system advantages, and related difficulties that result from violations of seniority rules, are not limited to collectively bargained systems.

For one thing, the typical seniority system provides important employee benefits by creating, and fulfilling, employee expectations of fair, uniform treatment. These benefits include "job security and an opportunity for steady and predictable advancement based on objective standards." Brief for Petitioner 32 (citing Fallon & Weiler, Firefighters v. Stotts: Conflicting Models of Racial Justice, 1984 S. Ct. Rev. 1, 57–58). See also 1 B. Lindemann & P. Grossman, Employment Discrimination Law 72 (3d ed. 1996) ("One of the most important aspects of competitive seniority is its use in determining who will be laid off during a reduction in force"). They include "an element of due process," limiting "unfairness in personnel decisions." Gersuny, Origins of Seniority Provisions in Collective Bargaining, 33 Lab. L. J. 518, 519 (1982). And they consequently encourage employees to invest in the employing company, accepting "less than their value to the firm early in their careers" in return for greater benefits in later years. J. Baron & D. Kreps, Strategic Human Resources: Frameworks for General Managers 288 (1999).

Most important for present purposes, to require the typical employer to show more than the existence of a seniority system might well undermine the employees' expectations of consistent, uniform treatment—expectations upon which the seniority system's benefits depend.

That is because such a rule would substitute a complex case-specific "accommodation" decision made by management for the more uniform, impersonal operation of seniority rules. Such management decisionmaking, with its inevitable discretionary elements, would involve a matter of the greatest importance to employees, namely, layoffs; it would take place outside, as well as inside, the confines of a court case; and it might well take place fairly often. Cf. ADA, 42 U. S. C. §12101(a)(1), (estimating that some 43 million Americans suffer from physical or mental disabilities). We can find nothing in the statute that suggests Congress intended to undermine seniority systems in this way. And we consequently conclude that the employer's showing of violation of the rules of a seniority system is by itself ordinarily sufficient.

B

The plaintiff (here the employee) nonetheless remains free to show that special circumstances warrant a finding that, despite the presence of a seniority system (which the ADA may not trump in the run of cases), the requested "accommodation" is "reasonable" on the particular facts. That is because special circumstances might alter the important expectations described above. Cf. *Borkowski*, 63 F. 3d, at 137 ("[A]n accommodation that imposed burdens that would be unreasonable for most members of an industry might nevertheless be required of an individual defendant in light of that employer's particular circumstances"). See also *Woodman* v. *Runyon*, 132 F. 3d 1330, 1343–1344 (CA10 1997). The plaintiff might show, for example, that the employer, having retained the right to change the seniority system unilaterally, exercises that right fairly frequently, reducing employee expectations that the system will be followed—to the point where one more departure, needed to accommodate an individual with a disability, will not likely make a difference. The

plaintiff might show that the system already contains exceptions such that, in the circumstances, one further exception is unlikely to matter. We do not mean these examples to exhaust the kinds of showings that a plaintiff might make. But we do mean to say that the plaintiff must bear the burden of showing special circumstances that make an exception from the seniority system reasonable in the particular case. And to do so, the plaintiff must explain why, in the particular case, an exception to the employer's seniority policy can constitute a "reasonable accommodation" even though in the ordinary case it cannot.

IV

In its question presented, US Airways asked us whether the ADA requires an employer to assign a disabled employee to a particular position even though another employee is entitled to that position under the employer's "established seniority system." We answer that *ordinarily* the ADA does not require that assignment. Hence, a showing that the assignment would violate the rules of a seniority system warrants summary judgment for the employer—unless there is more. The plaintiff must present evidence of that "more," namely, special circumstances surrounding the particular case that demonstrate the assignment is nonetheless reasonable.

Because the lower courts took a different view of the matter, and because neither party has had an opportunity to seek summary judgment in accordance with the principles we set forth here, we vacate the Court of Appeals' judgment and remand the case for further proceedings consistent with this opinion.

It is so ordered.