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Ex-USPS Worker Asks Justices To Rethink Religious Bias Test


By Abby Wargo

Law360 (August 23, 2022, 7:41 PM EDT) -- A Christian ex-mail carrier for the U.S. Postal Service filed a petition Tuesday with the U.S. Supreme Court challenging the Third Circuit's ruling that he wasn't unlawfully disciplined for missing work on Sundays because his repeated absences burdened his colleagues, saying an accommodation wouldn't be an undue hardship for the USPS.

Gerald Groff filed a **petition for writ of certiorari** asking the high court to revisit the Third Circuit's **April 2021 split summary judgment ruling** in favor of the Postal Service. In the petition, Groff said the case hinges on the issue of undue hardship, citing U.S. Circuit Judge Thomas M. Hardiman's dissenting opinion that assessing hardship on USPS' business is a jury's job, not judges'.



A Christian ex-mail carrier told the U.S. Supreme Court that his religious bias case against the U.S. Postal Service is the perfect vehicle for the high court to reconsider its 1977 *Hardison* ruling on what constitutes "undue hardship." (AP Photo/David Zalubowski, File)

Groff asked the high court to review the precedent set in *Trans World Airlines Inc. v. Hardison* , a 1977 case that defined the term "undue hardship" to mean anything that has more than a trivial burden on the employer. The Third Circuit had leaned on the *TWA v. Hardison* ruling in its precedential decision that a blanket exemption from working Sundays would have been an unnecessary burden on the postal agency and "far surpasses" the undue hardship standard.

As Groff's entire case hinges on the issue of "undue hardship," he said that makes it a perfect vehicle for the high court to reconsider the Hardison ruling.

The Hardison ruling, Groff argued in the petition, undermines religious freedom and allows employers to make excuses for denying religious exemptions just because they "seem more challenging" to accommodate.

He described the Third Circuit's ruling on his case as a "particularly egregious corollary" of the Hardison ruling, saying that under the panel's interpretation, businesses can "nearly always" argue undue hardship because all accommodations will impose on co-workers. Employee satisfaction, he said, is not a good measure of whether an accommodation is fair.

"The courts of appeals' emphasis on how an accommodation burdens co-workers (rather than the business) expands upon Hardison's misplaced desire to ensure that religious accommodations do not 'discriminate' against non-religious employees," Groff said.

The Third Circuit said that Groff's absences disrupted workflow, but Groff said in his petition that the USPS couldn't cite any concrete evidence that Groff had fully prevented the Postal Service from making Sunday deliveries.

Groff, a self-described evangelical Christian, believes that Sundays are meant for worship and rest, and he alleged in his 2019 complaint that the Postal Service had violated Title VII of the Civil Rights Act when it disciplined him for missing work about two dozen times — all instances in which USPS couldn't successfully find someone to swap shifts with him.

Groff worked as a rural carrier associate, a noncareer job that required him to cover for full-time carrier employees who are absent, for around seven years before he left in early 2019. When he told USPS he couldn't work on Sundays — a day that the USPS delivered parcels for Amazon by contract — it offered to find other employees to trade shifts with him.

Instead, Groff said he was disciplined after taking off 24 Sundays between March 2017 and May 2018. Groff's supervisor suggested alternatives to missing a full day of work, like coming in after religious services were finished, but Groff said he believed those still violate his religious rights.

In the Third Circuit's May ruling, the appeals court said a reasonable accommodation that, in practice, continues to flout a worker's religious rights does not fulfill Title VII's requirements and would still be considered discriminatory, but they still decided USPS' decision not to accommodate Groff's Sunday request was adequate under the law.

In his partial dissent, Judge Hardiman said he agreed with the majority that accommodations that don't eliminate the conflict between his religious practice and job requirements cannot be considered reasonable, but that he needed more evidence to conclude Groff's accommodation would have been a burden on USPS.

"No American should be forced to choose between their religion and their job," Stephanie Taub, of First Liberty Institute, who is representing Groff, said in a statement. "We are asking the court to overturn a poorly-reasoned case from the 1970s that tips the balance in favor of corporations and the government over the religious rights of employees."

Representatives for USPS did not immediately respond to requests for comment Tuesday.

Groff is represented by Christopher Tutunjian, J. Mark Little and Aaron M. Streett of Baker Botts LLP; Randall Luke Wenger and Jeremy L. Samek of Independence Law Center; Kelly J. Shackelford, Jeffrey C. Mateer, Hiram Sasser, David J. Hacker and Stephanie N. Taub of First Liberty Institute; David W. Crossett of Cornerstone Law Firm PLLC; and Alan J. Reinach and Jonathon Cherne of Church State Council.

The U.S. Postal Service is represented by Veronica J. Finkelstein and Lauren E. DeBruicker of the U.S. Attorney's Office for the Eastern District of Pennsylvania.

The case is *Gerald Groff v. Louis DeJoy*, case number not available, in the U.S. Supreme Court.

--Additional reporting by Vin Gurrieri. Editing by Nick Petruncio.

