

## ***Sunday Sabbath Observers Lose in Court***

As a Saturday Sabbath observer, the travail of Sunday Sabbath observers is near and dear to my heart. I have been involved with organizations and other entities which insisted on training and meetings on Saturdays, which are off limits to me. In fact, I had to give up my activity as a Criminal Justice Act attorney because training was on Saturday and no accommodation, reasonable or otherwise, would be made for me.

*Groff vs. Dejoy*, 2022 U.S. App. LEXIS 14195, 2022 WL 1654753 (May 25, 2022)(Shwartz, Circuit Judge), involved Plaintiff Gerald Groff, a Sunday Sabbath observer. His religious beliefs dictated that Sunday is meant for worship and rest.

As a result of Mr. Groff's beliefs, he informed his employer, the United States Postal Service ("USPS"), that he was unable to work on Sundays. USPS offered to find employees to swap shifts with him, but on more than twenty Sundays, no co-workers would swap, and Groff did not work. Groff was disciplined and ultimately left USPS. Groff sued USPS for violating Title VII by failing to reasonably accommodate his religion. Because the shift swaps USPS offered to Groff did not eliminate the conflict between his religious practice and his work obligations, USPS did not provide Groff a reasonable accommodation.

A three panel of the Third Circuit, however, with one judge dissenting, held that the accommodation Groff sought (exemption from Sunday work) would cause an undue hardship on USPS. An employer is not required "to accommodate at all costs." *Ansonia Bd. Of Education v. Philbrook*, 479 U.S. 60, 70 (1986). Where an employer's good-faith efforts to accommodate have been unsuccessful, the inquiry turns to whether the employer demonstrated that "such an accommodation would work an undue hardship upon the employer and its business." *EEOC v. GEO Grp., Inc.*, 616 F.3d 265, 271 (3d Cir. 2010). "An 'undue hardship' is one that results in more than a *de minimis* cost to the employer." *Id.* at 273. Both economic and noneconomic costs suffered by the employer can constitute an undue hardship. *Id.*

The undue hardship analysis is case-specific, requiring a court to look to "both the fact as well as the magnitude of the alleged undue hardship," though it is "not a difficult threshold to pass." *Id.* (quoting *Webb v. City of Philadelphia*, 562 F.3d 256, 260 (3d Cir. 2009)). The majority in Groff, concluded that his proposed accommodation of being exempted from Sunday work would cause an undue hardship. Exempting Groff from working on Sundays caused more than a *de minimis* cost on USPS because it actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale at both the Holtwood Post Office to which he was assigned and the Lancaster Annex hub, the regional post office of which Holtwood was a part.

The Holtwood Post Office had only a postmaster and three Rural Carrier Associates ("RCAs"), including Groff, available for Sunday deliveries. Because Groff would not work on Sundays, only three individuals remained who could work on Sundays during the peak season. After the one RCA who covered for Groff was injured, only the Holtwood Postmaster and the remaining RCA were available to work the Sunday shift. This placed a great strain on the Holtwood Post Office personnel and

even resulted in the Postmaster delivering mail on some Sundays. The Holtwood Postmaster testified, "[o]ther carriers were being forced to cover [Groff's] shifts and give up their family time, their ability to attend church services if they would have liked to," and these additional demands "created a tense atmosphere with the other RCAs." At the hub, Groff's absences also had an impact on operations and morale. The hub supervisor testified that Groff's absence made timely delivery more difficult, and carriers had to deliver more mail. As at the Holtwood Post Office, Groff's absence also had a negative impact on morale among the RCAs at the hub and resulted in a Union grievance being filed. According to management, allowing Groff to swap shifts was the only accommodation that would not impact operations and exempting him from the rotation would result in other employees "do[ing] more than their share of burdensome work." Thus, Groff's absences caused, and exempting Groff from Sunday work would continue to cause, an undue hardship. Because exempting Groff from Sunday work caused undue hardship, USPS did not violate Title VII by declining to grant his accommodation.

The majority opinion specifically references the existence of a collective *bargaining agreement that required workers to show up for work on Sundays*. See *Dejoy supra*, at \*3. USPS' compliance with the collective bargaining agreement meant that the shifting of responsibilities to other carriers to accommodate Mr. Groff could not be accomplished. This fact is what permitted the USPS to prevail.

Would the result have been different if there was no collective bargaining agreement of this nature? The opinion reviews a variety of precedents which did not feature a collective bargaining agreement or where it was not a pivotal factor. Those cases had various outcomes on either side of the issue. See *Dejoy, supra*, at \*11-23, citing *Webb v. City of Philadelphia*, 562 F.3d 256, 259 (3d Cir. 2009)(ruling that request of Muslim female Philadelphia police officer to wear a hijab while on duty and in uniform was an undue hardship because of the Department's overriding need to display neutrality and impartiality via the agency's uniforms)(relying on *inter alia*, the famous *Goldman v. Weinberger* case involving an Orthodox Jewish USAF officer); *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015)(summary judgment reversed because applicant in refusal to hire suit need only show that need for accommodation was a motivating factor in the employer's decision); *Morrisette-Brown v. Mobile Infirmary Med. Ctr.*, 506 F.3d 1317, 1320-1323 (11th Cir. 2007)(describing how shift changes, rotating shifts, transfers to other positions and other accommodations are permissible to accommodate the needs of a sabbath observant employee); *Shelton v. Univ. of Med. & Dentistry of N.J.*, 223 F.3d 220, 226-227 (3d Cir. 2000)(offer of lateral transfer constituted reasonable accommodation; Plaintiff's refusal to cooperate was unjustified); *EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1576 (7th Cir. 1997)(offering observant Jews a day off other than Yom Kippur does not constitute a reasonable accommodation); *Opuku-Boateng v. State of California*, 95 F.3d 1461, 1467 (9th Cir. 1996)(when negotiations between an employer and a sabbath observant employee do not produce a resolution, the employer must accept the employee's proposed form of accommodation or show how it would constitute an undue hardship where proposed accommodation would not have deprived any employee of any contractually-established seniority rights or privileges); *Brown v. Polk Cnty, Iowa*, 61 F.3d 650, 656-657 (8th Cir. 1995)(en banc)(concluding that no undue hardship where conduct created potential for polarization but there was no disruption to coworkers or the routine of the business).

However, the Supreme Court remanded for a determination of whether the provisions of the collective bargaining agreement had been discriminatorily applied. ; *DeJoy* also cited *Getz v. Pa. Dep't of Pub. Welfare*, 802 F.2d 72, 73-74 (3d Cir. 1986), a case where a neutral scheduling policy that allows for observance of religious obligations was deemed sufficient accommodation, in which the court noted that the reasonable accommodation requirement did not compel an employer to abrogate a collective bargaining agreement in order to enable an employee to satisfy religious observances. In *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 70 (1986), the Supreme Court remanded for a determination of whether the provisions of the collective bargaining agreement had been discriminatorily applied.

*DeJoy* further noted that some other courts utilize a “totality of the circumstances” test. *DeJoy, supra*, at 14, fn.12.

These are the significant fact-specific aspects of this Opinion.

1. There was a union contract requiring Sunday work.
2. Defendant offered evidence that the reasonable accommodation could cause undue hardship.
3. Other Sabbath workers might be found to be more consistent in terms of their work schedule *ab initio*.
4. The Plaintiff in *Dejoy* refused a lawful order to show up for work as required by the union contract.
5. Other Sabbath observers may be able to articulate that an accommodation for them would not disrupt the routine of business.
6. Not all agencies operate the way the U.S. Postal Service does and many other agencies do provide reasonable accommodations for Sabbath observant employees, including alternate work schedules. In other cases, evidence of how the particular agency operates with respect to Sabbath observant employees might be relevant.

The take away bullet points are as follows:

- US Postal worker requested not to have to work Sundays as his religious beliefs dictated that Sunday was reserved for worship and rest and prohibited work.
- The court said that allowing exemption from Sunday work was not a reasonable accommodation because it would cause undue hardship to the employer.
- It would cause problems of morale.
- It would cause problems of scheduling.

- It caused another employee to file a grievance.
- The undue hardship analysis is case specific.
- An employer is not required to accommodate at all costs.
- There is a dissenting opinion by Judge Hardiman.

*Clifford A. Rieders, Esquire  
Rieders, Travis, Dohrmann, Mowrey  
Humphrey & Waters  
161 West Third Street  
Williamsport, PA 17701  
(570) 323-8711 (telephone)  
(570) 323-4192 (facsimile)*

*Cliff Rieders is a Board-Certified Trial Advocate in Williamsport, is Past President of the Pennsylvania Trial Lawyers Association and a past member of the Pennsylvania Patient Safety Authority. None of the opinions expressed necessarily represent the views of these organizations.*