

A sneak peek at what a religious accommodation trial might look like for a guy who can't work Sundays

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2/10/25

After the case went all the way to the U.S. Supreme Court, on January 30 a federal district court [denied dueling motions for summary judgment](#) filed by Postmaster General Louis DeJoy, the U.S. Postal Service, and former Postal Service employee Gerald Groff regarding an alleged failure to reasonably accommodate Mr. Groff's inability to work on Sundays because of his religious beliefs.

Many federal courts no longer hold oral argument on motions for summary judgment. However, oral argument was held in this case, and it was even "live streamed" to various news organizations, reflecting the importance of the case to employers, employees, and religious organizations.

Because neither side won summary judgment, the case is headed for a jury trial unless the parties settle.

I do not purport to know how the trial will unfold. Nonetheless, [the transcript from the "lived streamed" argument](#) provides some clues.

But before peeking at that, let's take a trip down Memory Lane.

The reinvigorated duty to accommodate an employee's religious beliefs

In 2019, Mr. Groff sued Mr. DeJoy and the Postal Service, alleging that he had been constructively discharged because they failed to accommodate his religious beliefs by giving him Sunday off. As in every single Sunday.

In 2021, the district court dismissed the case. According to the court, Mr. DeJoy and the Postal Service had offered Mr. Groff a reasonable accommodation and that letting him skip all Sunday shifts would be an undue hardship.

In 2023, the U.S. Court of Appeals for the [Third Circuit](#) affirmed the dismissal. The appeals court agreed that exempting Mr. Groff from Sunday work would be an undue hardship to the Postal Service and would cause it to suffer more than a *de minimis* cost because it forced his

co-workers to work more Sundays, disrupted the workplace and workflows, and diminished employee morale.

Mr. Groff then asked the Supreme Court to revive his claims, and it did just that.

In an opinion that spawned numerous articles, including a few by yours truly ([here](#), [here](#), and [here](#)), the Court held that the "more than *de minimis*" standard was too lenient for employers. Instead, the Court said, for a finding of undue hardship, the employer had to show "substantial increased costs" in relation to the employer's business.

While the opinion provided few details about how courts were to apply this "substantial increased costs" test, it offered the following general guidelines:

- Courts must take into account "all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of the employer."
- Impact on co-workers is relevant only if it goes on to affect the conduct of the employer's business.
- Impact on co-workers attributable to their animosity to religion in general, the religious practice being accommodated, or the mere fact of an accommodation are irrelevant to the analysis.
- It is not enough for an employer to conclude that forcing employees to work overtime would be an undue hardship. The employer must consider other options, like voluntary shift swapping or offering premium pay to induce swapping.

Because the district court had not applied the "substantial increased costs" test to Mr. Groff's claims, the Court sent the case back.

A sneak peek at the religious accommodation trial

Remember, all motions for summary judgment have been denied. Absent a settlement, this case is going to trial.

Based on the oral arguments presented by the attorneys for Mr. DeJoy and the Postal Service, it appears that the defense case will include calling witnesses, and introducing exhibits, showing the following "substantial increased costs" if Mr. Groff's request were granted:

- The Postal Service would need to violate the terms of a collective bargaining agreement with the union representing its employees.
- The legitimate contractual work expectations of other employees would need to be upset.
- One employee would have to take on all of the Sunday deliveries to accommodate Mr. Groff.
- Efforts to accommodate Mr. Groff's request had led to grievances, the threat of a boycott, and one resignation.

Of course, saying something in an oral argument and proving it at trial are light years apart. As the Postal Service attorney explained to the court, "we know the employees at issue. There's no indication we wouldn't be able to call them at trial if this were to come to trial."

Make no mistake. This means a parade of management and non-management front line workers would be called to the stand, presenting their testimony, and then being cross examined by Mr. Groff's attorneys.

Along the way motions will be made to preclude certain evidence from being offered, and objections will be made to the evidence that is offered.

Based on the oral argument made by Mr. Groff's attorneys, his evidence would show the following:

- The expectations of other employees are not based on seniority rights created by a collective bargaining agreement.
- The grievances and grumblings of other employees did not affect the conduct of the Postal Service's business of delivering packages and mail.
- Management witnesses testified that granting Mr. Groff's requests was not an undue hardship.
- No packages went undelivered on the occasions when Mr. Groff's religious beliefs were accommodated.
- The Postal Service did not consider borrowing employees from other locations to cover Mr. Groff's absences on Sundays.

- The Postal Service did not consider offering incentive pay to induce employees to cover Mr. Groff's shifts.

Trials are dynamic events. Game plans are drawn, redrawn, and revised throughout the trial. The outcome will be heavily dependent on the makeup of the jury and how they perceive the witnesses and explanations offered.

Wait for the movie

If this case proceeds to trial, much ink is likely to be devoted to dissecting the outcome and what it means for responding to religious accommodations in the coming years.

But for now, you have had your sneak peek preview and will have to wait for the movie itself.

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