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OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 83-997 & 83-1325

TITLE TRANS WORLD AIRLINES, INC., Petitioner v. HAROLD H. THURSTON, ET AL.; and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, Petitioner v. HAROLD H. THURSTON, ET AL.

PLACE Washington, D. C.

DATE October 9, 1984

PAGES 1 thru 48

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IN THE SUPREME COURT OF THE UNITED STATES

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TRANS WORLD AIRLINES, INC., :

Petitioner, :

v. : No. 83-997

HAROLD H. THURSTON, ET AL.; :

and :

AIR LINE PILOTS ASSOCIATION, :

INTERNATIONAL, :

Petitioner :

v. : No. 83-1325

HAROLD H. THURSTON, ET AL. :

- -x

Washington, D.C.

Tuesday, October 9, 1984

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:15 o'clock p.m.

APPEARANCES:

HENRY J. OECHLER, JR., ESQ., New York, New York; on behalf of TWA.

MICHAEL E. ABRAM, ESQ., New York, New York; on behalf of ALPA.

APPEARANCES: (Continued)

LAWRENCE G. WALLACE, ESQ., Deputy Solicitor General, Department of Justice, Washington, D.C.; on behalf of the EEOC.

RAYMOND C. FAY, ESQ., Chicago, Illinois; on behalf of Thurston, et al.

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1 PROCEEDINGS

2 CHIEF JUSTICE BURGER: We will hear arguments
3 next in Trans World Airlines against Thurston.

4 Mr. Oechler, you may proceed whenever you are
5 ready.

6 ORAL ARGUMENT OF HENRY J. OECHLER, JR., ESQ.,
7 ON BEHALF OF TRANS WORLD AIRLINES, INC.

8 MR. OECHLER: Mr. Chief Justice, and may it
9 please the Court, this Court granted certiorari to the
10 second circuit to consider three issues under the Age
11 Discrimination and Employment Act: one, a standard of
12 liability under the ADEA; two, a standard for
13 wilfullness under the ADEA; and three, whether a union
14 can be monetarily liable under the ADEA.

15 Now, TWA, like all major airlines, must adhere
16 to the safety regulations of the Federal Aviation
17 Administration. One of those safety regulations
18 requires that a captain cannot serve as a captain beyond
19 the age of 60, and the issue before this Court is, to
20 what extent, if any, the ADEA requires an employer to
21 find another job for that captain nor anyone else unable
22 to perform in his former position because of age.

23 Now, in an effort to make just such an
24 accommodation, TWA took the lead amongst the airline
25 industry and adopted a policy of relying on the existing

1 neutral bidding procedures of its working agreement.

2 Over a four-year period, this policy resulted

3 in an 83 percent success rate for those captains seeking

4 to serve as flight engineers -- for those captains

5 seeking to serve beyond age 60 in a position not subject

6 to the FAA rule, namely, that of flight engineer, which

7 is the third seat in the cockpit.

8 And while TWA was experiencing an 83 percent

9 success rate, the rest of the airline industry during

10 this four-year period had a zero percent success rate.

11 Nevertheless, despite this 83 percent success rate, that

12 was not sufficient for what the EEOC itself admits is a

13 handful of plaintiffs who were retired as captains

14 because they had been unable or unwilling to obtain a

15 flight engineer bid.

16 Now, the court below said that the plaintiffs

17 were entitled to a virtual guarantee to a flight

18 engineer position, because in certain limited and

19 admittedly non-age-related circumstances, there is an

20 automatic right for a captain to go to flight

21 engineer.

22 For example, under the contract, a captain

23 must maintain an FAA first class medical certificate.

24 If for medical reasons he cannot maintain that FAA

25 medical certificate, and can only maintain a second

1 class medical certificate, he is entitled under the
2 contract to revert to flight engineer.
3 Now, the court said, because you did that for
4 what was admittedly a non-age reason, you must do a
5 similar type of accommodation with respect to the
6 plaintiffs here.
7 QUESTION: Of course, that is some
8 discrimination, isn't it?
9 MR. OECHLER: Well, we submit it is not based
10 on age. What they are seeking here, the fact that they
11 want a reversion right to flight engineer is strictly
12 because of the fact that you have an age 60 rule which
13 prohibits Captain Thurston and similarly situated
14 plaintiffs from continuing as a captain. If Captain
15 Thurston had had his way, he would have wanted to fly
16 long past age 60 as a captain.
17 That was impossible because of the FAA rule,
18 so what he is seeking here is a reversionary right based
19 on the fact that he reached age 60, and the court
20 described that -- the dissent described that below as
21 apples versus oranges, because the fact that this
22 reversionary right is available to everyone on the TWA
23 pilot work force, including Captain Thurston, if at age
24 55 he had a medical problem, he had lost his first class
25 medical certificate, he could have downbid, he could

1 have reverted to flight engineer at age 55.

2 But we submit that the ADEA and the

3 legislative history of the ADEA says you do not now have

4 to create that right based on age. Page 12 of the House

5 of Representatives report which accompanied the 1978

6 amendments which are at issue here specifically said,

7 you do not have to provide special working conditions,

8 and specifically said, based on age, and specifically

9 said, you do not have to retrain and transfer.

10 And what we are talking about here is

11 retraining Captain Thurston and transferring him from a

12 captain to flight engineer. Now, the question of how

13 much an employer must accomodate its employees was a

14 subject of concern to this Court in another case

15 involving TWA, in another case involving the TWA

16 collective bargaining agreement.

17 That case was TWA v. Hardisan, at 432 US 63,

18 and in that case, Mr. Hardisan contended that because of

19 his religious beliefs, he was entitled not to work on a

20 Saturday, despite the fact that the seniority provisions

21 and the working agreement were going to require him to

22 work on a Saturday.

23 That case arose under Title 7, where there

24 actually is a specific provision about accommodation,

25 while -- a religious accommodation, while here it can

1 only be -- such a claim for accommodation can only be
2 implied, and the Court said that you do not have to go
3 that far -- Pages 79 to 81 in particular, they discussed
4 this question -- that the employer does not have to go
5 that far to accommodate the employee.

6 And we submit that has equal applicability
7 here, and it is also important to remember how the
8 posture of this case arose. When TWA announced its
9 policy in August of 1978, it was immediately faced with
10 a lawsuit from the union contending that what we had
11 done by allowing anyone to fly beyond 60, and today we
12 have over 150 people flying beyond 60, violated the
13 Railway Labor Act, because we had unilaterally changed
14 our wages, rates, and working conditions.

15 And they also contended that what we had done
16 was not mandated by the ADEA. Soon thereafter the
17 plaintiffs came in and said that we hadn't gone far
18 enough. The union said we had gone too far. The
19 plaintiffs came in several months later, brought suit
20 saying we hadn't gone far enough to accommodate them.

21 Then we were faced with a third suit brought
22 by younger flight engineers who quite properly pointed
23 out that they had been put on furlough because in a
24 reduction in force we had kept the older people on the
25 payroll based on their seniority, and we had -- when we

1 had a reduction in force, the younger people had gotten
2 furloughed, and they contended we had again violated the
3 Railway Labor Act.
4 So, TWA was faced with the situation where it
5 is trying to comply with both the contract and various
6 statutes. This Court has recognized in the Furnco
7 decision that courts are less competent to restructure
8 business practices and the law does not require
9 employers to maximize employee opportunities, and we
10 believe that that mandate of this Court was satisfied
11 here.
12 QUESTION: I suppose if the basis for the
13 ruling was you were discriminating, I suppose you could
14 have eliminated the discrimination the other way by just
15 not allowing any automatic transfers.
16 MR. OECHLER: Well, our contract allowed
17 downbidding, and prior to age 60, historically the
18 contract did allow downbidding, so we felt --
19 QUESTION: Automatic?
20 MR. OECHLER: No, not automatic.
21 QUESTION: Well, automatic --
22 MR. OECHLER: For those few specific
23 situations, but the normal bidding procedure --
24 QUESTION: Well, you have some automatic
25 downbidding.

1 MR. OECHLER: That's right.

2 QUESTION: Was that required by the
3 contract?

4 MR. OECHLER: Yes, that was provided in the
5 contract.

6 QUESTION: I suppose you could have negotiated
7 yourself out of that. If those automatic downbiddings
8 were eliminated, you wouldn't -- this case wouldn't be
9 here, would it?

10 MR. OECHLER: Arguably not, but those
11 provisions have been in the contract a long time, and we
12 certainly would have been faced with a claim by the
13 plaintiffs if we did eliminate those types of automatic
14 downbidding that that was an effort at age
15 discrimination because we were eliminating the bases for
16 their claims, and that that would be further evidence of
17 age discrimination.

18 QUESTION: What is your legal position under
19 the contract if you have to give automatic downbidding
20 to pilots becoming 60? Are you --

21 MR. OECHLER: We say that that is not -- that
22 there is no provision in the contract that requires that
23 on the basis --

24 QUESTION: Or forbids it?

25 MR. OECHLER: Well, when they get --

1 QUESTION: Would you have to -- is it --

2 MR. OECHLER: When they reach age 60, they are

3 not in a position that they can perform as captains.

4 QUESTION: I understand.

5 MR. OECHLER: The contract says that a captain

6 -- defines a contract -- defines a captain in Section

7 33(b) as someone who is a pilot in command. Now, when

8 he reaches age 60 --

9 QUESTION: He is no longer anything.

10 MR. OECHLER: -- he is not a pilot in

11 command. What are we to do with him? And that was the

12 problem we were faced with, and if we then changed our

13 contract, we were faced with Railway Labor Act

14 violations.

15 QUESTION: What if a month before he got to be

16 60 you let him downbid?

17 MR. OECHLER: We did, and that is how we got

18 60. We have 60 people presently captains, presently

19 serving beyond the age of 60 as flight engineers.

20 QUESTION: As flight engineers.

21 MR. OECHLER: Who bid down in the normal

22 bidding procedures that were in the contract before the

23 law was amended in 1978 and have continued to serve.

24 Plus we have 100 career flight engineers, people who

25 have never gone above the level of flight engineer.

1 They have also continued to serve beyond the age of 60.

2 QUESTION: May I think this through out loud

3 with you for just a second? Is the class of persons we

4 are concerned with properly defined as pilots who are no

5 longer eligible for one reason or another to be in

6 command and who want to become flight engineers?

7 MR. OECHLER: The class that is involved here

8 insofar as who is aggrieved are --

9 QUESTION: No, well, those aggrieved are a

10 subclass of the class I have described.

11 MR. OECHLER: That is right, but if at age 59

12 and a half --

13 QUESTION: I know, but is it correct, and I am

14 not sure this answers it, is it correct that everybody

15 in the class except those who reach the age of 60 have a

16 contractual right to downbid as I described the class?

17 MR. OECHLER: Everybody prior to age 60 have a

18 right, and if there is a vacancy, the company -- and

19 they have the requisite seniority, the company awards

20 them that right, but when they hit age 60, the age 60

21 rule comes -- applies to them. We have a neutral

22 bidding procedure, but the age 60 rule applies to them,

23 and they hit age 60, and what are we going to do with

24 them?

25 QUESTION: But is there anything that --

1 MR. OECHLER: The contract specifically says
2 they have to be pilots in command.
3 QUESTION: Is there anything other than the
4 fact that they are 60 years of age that disqualifies
5 them from the downbidding right?
6 MR. OECHLER: No, it is the age 60, a rule
7 imposed by the government, and now the government is
8 saying, we must make -- they are telling us what we must
9 do with them, despite the fact that they were the ones
10 who imposed the government regulation upon us in the
11 first place.
12 I would like to reserve the rest of my time
13 for rebuttal, if I may.
14 CHIEF JUSTICE BURGER: Mr. Abram?
15 ORAL ARGUMENT OF MICHAEL E. ABRAM, ESQ.,
16 ON BEHALF OF ALPA
17 MR. ABRAM: Mr. Chief Justice, and may it
18 please the Court, the argument addressed by TWA revolves
19 around Section 4(a) of the Age Discrimination Act, and
20 argues that there is no substantive violation of that
21 Act. The argument addressed by ALPA is that even if
22 there were a violation of 4(a) in respect to the
23 practices in this case for this handful of former
24 captains, that practice is protected by an affirmative
25 defense, definitional provision, however you wish to

1 characterize it, 4(f)(1) of the statute.

2 Now, there is no dispute in this case that

3 being less than 60 years of age is a BFOQ for the

4 position of captain in TWA fight operations. The

5 government has imposed that regulation. The question

6 that Section 4(f)(1) of the ADEA addresses is simply

7 what -- well, there are really two questions: first,

8 how do you go about establishing a BFOQ; and secondly,

9 once the BFOQ is established, what action may be taken

10 in respect to that fact?

11 As I say, the question as to whether the BFOQ

12 exists has been answered in this case. The only

13 question then is, what action may be taken? Now,

14 Section 4(f)(1) in plain terms says that it is not

15 unlawful under the Age Discrimination Act for an

16 employer to take any action, any action otherwise

17 prohibited where age is a BFOQ.

18 Now, that is the kind of sweeping language

19 that this Court has admonished time and again is to be

20 read in accordance with its terms, and indeed, what the

21 EEOC is actually asking that this Court do is to revise

22 the section so that where the section says that the

23 employer may take any action, it should be read to say,

24 the employer may take only one action.

25 That is the action of simply removing the

1 captain out of that job, and then the employer may take
2 any other action which is not prohibited by Section
3 4(a), whereas 4(f)(1) says you may take any action which
4 is prohibited by Section 4(a).
5 Now, the plain meaning of 4(f)(1) is plainly
6 buttressed in this case by the legislative history of
7 that provision. In 1967, when the ADEA was enacted,
8 Congress legislated against a background of mandatory
9 retirement practices, and it prohibited some of those
10 practices, but not all of them.
11 QUESTION: I take it you would be urging the
12 same position if in express language the contract said
13 that pilots who become disqualified by reasons of health
14 or some other reasons from remaining as a captain may
15 downbid, but pilots who become disqualified by reason of
16 age may not.
17 MR. ABRAM: Your Honor, that is precisely
18 4(f) --
19 QUESTION: If that -- if in so many words, you
20 would still take the same position?
21 MR. ABRAM: 4(f)(1) addresses precisely that
22 type of possibility. Yes, Your Honor. It is a defense
23 to an action --
24 QUESTION: Even though it is another brand of
25 age discrimination?

1 MR. ABRAM: If there were age discrimination,
2 it would be covered by 4(a); 4(f)(1) then steps into
3 place as a defense to that age discrimination. It has
4 no role at all, unless there is age discrimination. And
5 in this case, our argument assumes for the purposes of
6 the argument that that discrimination exists, although
7 we agree with Mr. Oechler on merit.

8 QUESTION: Well, I know, but there are two
9 different kinds of age discrimination.

10 MR. ABRAM: I am sorry, Your Honor?

11 QUESTION: Aren't we talking about two
12 different kinds of age discrimination? They certainly
13 can claim that they may discharge a pilot, discharge a
14 man from a pilot's position at age 60 and not be guilty
15 of age discrimination.

16 MR. ABRAM: That is precisely what -- is
17 argued.

18 QUESTION: But then they say also by reason of
19 your age we won't give you the same privileges as other
20 pilots who become disqualified.

21 MR. ABRAM: Well, they say that by reason of
22 the age 60 rule, the BFOQ rule which the FAA has
23 imposed, we will mandatorily retire you rather than then
24 permit you to exercise your --

25 QUESTION: And the reason we are doing it is

1 because of your age.

2 MR. ABRAM: Well, the reason for that decision

3 is one in this instance which has to be addressed, I

4 think, to the employer, but the question that the

5 association, the Airline Pilots Association addresses is

6 that that decision, whatever the reason, and even if it

7 is because of age, Your Honor, is protected by 4(f)(1),

8 under the plain meaning of the statute and as buttressed

9 by the legislative history.

10 When Congress legislated in 1967, it

11 authorized mandatory retirement under 4(f)(2), and it

12 authorized it under 4(f)(1). 4(f)(2), of course, the

13 Court is aware, is the employee benefit plan and

14 seniority system defense. Now, 4(f)(2) has been changed

15 by Congress in the 1978 amendments, and Congress when it

16 -- of course, these statutory references are at Page 3

17 and 4 of the brief of TWA.

18 When Congress amended 4(f)(2) in 1978 to take

19 away mandatory retirement under an employee benefit

20 plan, they were faced with the problem that some people

21 might argue that when they did that, that there could no

22 longer be mandatory retirement at an age which is a

23 BFOQ, that that would no longer be protected under

24 4(f)(1).

25 The Senate passed an amendment to 4(f)(1),

1 literally passed it. It wasn't a Committee. It was
2 passed by the Senate, and that amendment provided
3 explicitly that the action that could be taken under
4 4(f)(1) included the action of mandatory retirement, and
5 when that got to the Conference Committee, because the
6 House did not have that provision in its legislation,
7 the conferees agreed that it would not -- that amendment
8 would not be in the final bill because it worked no
9 change on the present law.
10 They plainly understood and were expressing
11 for all of us to see and read that the present law going
12 back to 1967 authorized mandatory retirement at an age
13 which is a BFOQ.
14 And in the EEOC v. Wyoming case, which
15 involved the mandatory retirement of the game warden and
16 the application of the ADEA to the states, one of the
17 concerns that this Court had was, well, what could
18 happen with this game warden if he was disqualified by a
19 BFOQ?
20 And the Court said in reliance on assurances
21 of the EEOC that the state of Wyoming would be free to
22 do, as to that game warden, precisely what they had been
23 doing and what employers had been doing where age is a
24 BFOQ, and that was in that case mandatory retirement.
25 Now, Section 4(f)(1) is a defense of general

1 application, and it doesn't depend, unlike the analysis
2 of the EEOC, and with due respect, the Second Circuit,
3 it simply does not depend on what other practices the
4 employer may be engaging in with respect to its
5 employees.

6 It doesn't require the employer to justify on
7 a case by case, business by business, job by job
8 analysis.

9 QUESTION: You say then that if a practice is
10 justified under 4(f)(1), the fact that the employer may
11 treat employees of a lesser age more leniently does not
12 make the practice that is justified under 4(f)(1) a
13 discrimination because of age?

14 MR. ABRAM: I analyze it in terms of a defense
15 to what would otherwise be considered age
16 discrimination. Of course, in this case, it must be
17 remembered that flight engineers past the age of 60 have
18 the same rights under the contract as those younger than
19 60. That is worth bearing in mind when we look at this
20 particular set of practices.

21 But we would analyze it as a defense to what
22 would otherwise be prohibited by Section 4(a).

23 QUESTION: Because you would be treating
24 people who attained age 60 differently than people who
25 attained age 45 in a comparable situation?

1 MR. ABRAM: Well, that depends, Your Honor, on
2 whether it is comparable, and the Second Circuit split
3 two to one on whether there were apples and oranges
4 here, and --
5 QUESTION: But don't you say, even if it is
6 comparable, you are protected by 4(f)(1)?
7 MR. ABRAM: That's correct. Absolutely.
8 QUESTION: Congress could not pass a law and
9 say that all pilots at age 60 shall be put out to
10 pasture, could they?
11 MR. ABRAM: I think Congress, pursuant to its
12 authority to regulate commerce, could do so, just as it
13 has delegated that authority to the Federal Aviation
14 Administration, to say that if the FAA chose --
15 QUESTION: I didn't understand FAA said you
16 will quit. FAA said you just can't be a pilot.
17 MR. ABRAM: That's correct, and the --
18 QUESTION: Well, could the FAA have said you
19 can't work?
20 MR. ABRAM: The FAA could have said you can't
21 be a flight engineer, and they have not at this point
22 said so, but they could have.
23 QUESTION: Could they say you can't work any
24 place?
25 MR. ABRAM: I would think, Your Honor, that

that would be unconstitutional under other provisions.

QUESTION: Isn't that what has happened here?

MR. ABRAM: No, Your Honor. All that has happened is that Congress has authorized mandatory retirement in a narrow range of cases which this Court recognized in EEOC v. Wyoming was a very narrow range of cases of the BFOQ cases. And in those narrow cases, there would be mandatory retirement permitted, and no case by case analysis.

Now, in my few remaining minutes addressing briefly the question of remedies insofar as union liability is concerned, an issue that was raised by TWA which seeks to shift some of its liability in the event there is an affirmance on the substance of the case, on the merits of the 4(a) issue to the Airline Pilots Association.

This is, of course, an action for lost wages, that is to say, amounts owing. And the Age Discrimination and Employment Act clearly provides, and this Court recognized in Lorillard that amounts owing are to be treated as unpaid minimum wages and overtime compensation for purposes of the Fair Labor Standards Act.

I don't think there is really a serious dispute in this case that the Fair Labor Standards Act

1 does not provide a remedy against a union which violates
2 those provisions by a collective bargaining agreement
3 that would be, for example, a violation of some
4 provisions of the FLSA.

5 But just addressing it briefly, you have
6 Section 16(b) of the Fair Labor Standards Act, which is
7 clearly directed to employers.

8 You have Section 16(c), which has historically
9 been interpreted to add to the government only the right
10 to collect on behalf of an individual, the individual's
11 right under Section 16(b), and you have Section 17 of
12 the Fair Labor Standards Act, which has been interpreted
13 to restrain the withholding of unpaid minimum wages and
14 overtime compensation from employers.

15 Now, against this background, the government
16 and the plaintiffs and, I believe, TWA would like the
17 Court to read Section 7(b) of the Age Discrimination
18 Act, where it contains language on equitable and legal
19 relief to provide a new remedy that is not in the Fair
20 Labor Standards Act.

21 Even assuming that TWA could raise that issue
22 because essentially it is raising a claim for
23 contribution, and the plaintiffs and --

24 QUESTION: May I ask, below the union
25 prevailed on this question, didn't it?

1 MR. ABRAM: The union prevailed on this
2 question below.
3 QUESTION: And neither EEOC nor -- sought
4 review of that, did they?
5 MR. ABRAM: They not only didn't seek review
6 of it, Your Honor, they opposed review of it explicitly,
7 and said that they would intend to collect on a joint
8 and several liability.
9 QUESTION: Are you going to argue that we
10 ought not hear TWA on this question?
11 QUESTION: TWA raised it, didn't they?
12 MR. ABRAM: TWA raised their right to shift
13 damages. They may call it union liability, but in
14 essence what right do they have to represent
15 plaintiffs? They are a defendant. Any right that they
16 have is to seek --
17 QUESTION: They can't have contribution under
18 Northwest Airlines --
19 MR. ABRAM: That's correct, Your Honor. That
20 is precisely the analysis.
21 QUESTION: Are you arguing that we ought or
22 ought not here?
23 MR. ABRAM: I am arguing, Your Honor, that the
24 Court ought not to hear it, but that if it does hear
25 TWA's claim, it should be rejected under Northwest v.

1 TWU because it is a claim for contribution, and I can
2 perceive no distinction between this statutory scheme in
3 that sense and, of course, Title 7 and the Equal Pay
4 Act, which was part of the FLSA that was dealt with in
5 the TWU case.

6 But if the Court were to reach the question,
7 the argument that Section 7(b) or 7(c) of the ADEA adds
8 remedies to those contained in the FLSA and creates a
9 remedy against a union is really another invitation to
10 judicial legislation, because whereas it is true that
11 Title 7 substantive prohibitions are very similar to, as
12 this Court recognized in Lorillard, to the ADEA
13 substantive provision.

14 The remedial schemes, the comprehensive
15 remedial scheme of ADEA and the FLSA is quite different,
16 and while Congress in Title 7 established a monetary
17 remedy against unions, it did not do so in the ADEA.
18 When we are dealing with a comprehensive remedial scheme
19 our position is simply to follow the precedents that
20 were laid out in Northwest v. TWU and the Ratcliffe
21 Industries case and say that the choices that are to be
22 made as to the remedies, the policies, the policy
23 choices, what would best further the enforcement of this
24 Act are choices that are to be made by Congress, and
25 they have been made in this instance by not providing

1 that remedy.

2 Thank you.

3 CHIEF JUSTICE BURGER: Mr. Wallace.

4 ORAL ARGUMENT OF LAWRENCE G. WALLACE, ESQ.,

5 ON BEHALF OF THE EEOC

6 MR. WALLACE: Mr. Chief Justice, and may it
7 please the Court, there are three separate categories of
8 issues to be determined in this case. The first is
9 whether there was a violation in this case which would
10 automatically give rise to a remedy for back pay.

11 The second is whether the liquidated damages
12 provision which doubles the award of back pay should
13 apply, and that is the only question with respect to
14 which the statutory limitation to wilfull violations
15 comes into the case. And the third question is whether
16 the union shares liability for monetary relief with the
17 employer, and whether that question is properly before
18 the Court.

19 Addressing the question of a violation first,
20 we readily agree that nothing in the Act would require
21 TWA to make any arrangements to transfer captains or
22 copilots to other jobs at the time that they are
23 required to leave those positions if such transfer
24 arrangements aren't made for other employees.

25 This is strictly a disparate treatment case in

1 comparing the way these older employees are treated with
2 the way younger employees are treated. Now, what we
3 have been told by TWA is that these pilots upon reaching
4 age 60 are no longer pilots in command, and therefore
5 cannot qualify for any transfer rights.

6 There are two points to be made. The first
7 is, all of the plaintiffs before the Court requested
8 transfers prior to reaching their 60th birthday, when
9 they were pilots in command. Those who were
10 unsuccessful in obtaining the transfers were
11 unsuccessful because the process could not be completed
12 prior to reaching their 60th birthday.

13 We discuss in Footnote 9 in our brief one
14 exceptional case where through correspondence with the
15 employer one of the EEOC plaintiffs was, he says, misled
16 into not actually submitting his bid until after his
17 60th birthday.

18 But the basic point -- it is the second point
19 -- is that in comparing their situation with those of
20 younger pilots exercising transfer requests, the younger
21 pilots who flunk their medical examination for a first
22 class medical certificate and then request a transfer,
23 or who are disciplined for misconduct in their job as
24 captains or as copilots are no longer pilots in command
25 when they make their request for a transfer.

1 So, there is no distinction between the
2 plaintiffs here and the younger pilots whose treatment
3 they are being compared to on the basis of whether they
4 are pilots in command at the time the transfer requests
5 are afforded.

6 QUESTION: Are those really comparable
7 situations when you are talking about a pilot who is 35
8 or 40 years old, runs into a completely unanticipated
9 medical difficulty, and on the other hand, it seems to
10 me in the case of a pilot who is approaching age 60,
11 that is not a sudden thing at all. That is something
12 that can really be anticipated by everybody concerned.

13 MR. WALLACE: And it was anticipated by making
14 a request for a transfer prior to reaching age 60.
15 Those requests were not honored if the actual transfer
16 to a different position wasn't completed before that
17 pilot reached age 60.

18 QUESTION: Well, Mr. Wallace, what about the
19 effect of Section 4(f)(1), which appears expressly to
20 permit an employer to take any action otherwise
21 prohibited by the Age Discrimination and Employment Act
22 for a person who is retired pursuant to a BFOQ?

23 MR. WALLACE: Yes, that is the argument made
24 with respect to a reading of that phrase at the
25 beginning of that section.

1 QUESTION: Well, doesn't the literal language
2 certainly make it look like that argument has to be
3 dealt with?
4 MR. WALLACE: Well, we attempted to deal with
5 it, and let me deal with it now, Justice O'Connor. Our
6 understanding of the bona fide occupational
7 qualification requirement is that it applies to the
8 particular occupation for which it is a legitimate
9 requirement.
10 QUESTION: Doesn't the legislative history
11 indicate that if there is a BFOQ, the employer was not
12 intended to have to find some other job for the
13 mandatorily retired employee?
14 MR. WALLACE: And we agree with that, that
15 there is no necessity to make special arrangements for a
16 mandatorily retired employee. That is why we took the
17 position we did in EEOC against Wyoming.
18 The difference here is that, as in Hishon
19 against Spaulding, the employer is affording certain
20 privileges as an incident of employment and certain
21 contractual rights as an incident of employment, and
22 wants to extend them only to one category of employees,
23 in that case based on sex and in this case based on
24 age. And that is precisely the kind of discrimination
25 that Congress addressed.

1 The fact that it is -- that the FAA regulation
2 says they no longer can serve in this particular job
3 because of their age, that is a BFOQ with respect to
4 that job, but all it means with respect to their
5 transfer request is that the reason they are making the
6 request is because of their age --
7 QUESTION: Well, if the EEOC position were to
8 prevail, wouldn't it have the effect in general of
9 discouraging employers from offering any benefits to
10 anybody? Wouldn't it serve to discourage any other
11 employer from ever affording any kind of opportunity to
12 downgrade or have another break, because they are going
13 to be hit with this kind of a charge?
14 MR. WALLACE: I don't know the answer to that
15 question, Justice O'Connor. It is the kind of argument
16 that is similar to arguments that were made against the
17 Age Discrimination and Employment Act altogether, that
18 it was going to deprive younger workers of opportunities
19 to move up and to transfer to other positions, and
20 Congress resolved that policy question the other way,
21 and when Congress thought the Courts and particularly
22 this Court had gone too far in permitting mandatory
23 retirements as part of a seniority system, they amended
24 the Act to say that mandatory retirements could not be a
25 part of this defense based on a seniority system.

1 They were concerned that people who still
2 wanted to be a productive part of the work force not be
3 discriminated against because of their age, and they
4 recognized that this might delay advancement of other
5 people or cause other people not to have job
6 opportunities that would otherwise be there.
7 And that is part of what we are faced with
8 here. Now, let me just try to respond further to your
9 question with a hypothetical, which I don't think is
10 unrealistic since we have the Age Discrimination Act
11 which allows persons to enter the work force at an
12 advanced age. Supposing you had someone who became a
13 pilot at age 59 for the first time and had to give up
14 his job at age 60 and just severed his relations with
15 the company because he didn't have enough seniority to
16 make a bid.
17 Similarly, another worker became a pilot at
18 age 35, and at age 36 for disciplinary reasons or
19 medical reasons he was removed from that job, he
20 similarly severed his relations with the company. Then
21 the company expands operations and is hiring flight
22 engineers a year later, and they both apply for the
23 job.
24 It is obvious and in fact it is conceded in
25 the reply brief on the other side that the company could

1 not discriminate between these two applicants for the
2 flight engineer's job based on their age. Why should a
3 different principal prevail based on whether in
4 transferring to the job in the first place they can
5 carry over their seniority rights or not when they are
6 seeking the job because they no longer can perform the
7 other job they have? It isn't a sensible interpretation
8 of a defense, a BFOQ defense that was tied to the idea
9 that the employer need not hire persons for the
10 particular occupation for which the BFOQ defense
11 applies.

12 On the liability question, we really don't
13 think there is a material difference between this case
14 and Hishon against King and Spaulding. The statutory
15 context is different, but there is no material
16 difference. We are dealing with privileges and contract
17 rights that are afforded as an incident of employment,
18 and indeed this case really follows a fortiori from the
19 Hishon case because the job to which they are seeking to
20 be transferred is itself an employee position, whereas
21 in Hishon the Court assumed that it --

22 QUESTION: Do we have a statutory provision
23 equivalent exactly to 4(f)(1)?

24 MR. WALLACE: That was not present, but I
25 think the hypothetical that I just discussed really

1 answers it. They are not saying that because this older
2 employee severed his ties with the company because of a
3 BFOQ, he can now be denied equal consideration as an
4 outsider to the flight engineer job.
5 I don't see why there is anything in the
6 statute that should require the opposite result with
7 respect to his effort to transfer and to use his
8 accumulated seniority for the same purpose.
9 QUESTION: Mr. Wallace, isn't the difference
10 is that in your hypothetical, at the time the two people
11 apply, neither of them is a member of the BFOQ, whereas
12 in the case before us, at the time the application to
13 downgrade is made, the person who applies is then the
14 member of a BFOQ? And is that a significant
15 difference? Maybe it is just that the statute says so.
16 I don't know. That's the trouble with hypotheticals.
17 MR. WALLACE: One of the two applicants --
18 QUESTION: You hypothesize away the statutory
19 provision.
20 MR. WALLACE: One of the two applicants had
21 been subject to the BFOQ for the captain job. He had
22 been severed from the company for that reason. If he
23 had not been, he wouldn't be applying now for the flight
24 engineer job. The difference is in whether he can be
25 discriminated against differently because he before he

1 is severed is trying to use his seniority rights to
2 apply for the same job, and the statute --
3 QUESTION: It seems to me your stronger
4 argument is not that the hypothetical is the same, but
5 rather, that the BFOQ is made for the purpose of
6 determining eligibility to fly airplanes, not to be
7 flight engineers.
8 MR. WALLACE: I agree with that completely.
9 QUESTION: I don't know whether the language
10 will accommodate that, but that is -- if there is merit
11 in your position, it seems to me that is the argument.
12 MR. WALLACE: Well, the language is, like so
13 many other things in this statute, as the Court
14 recognized in Lorillard against Pons, the statute was a
15 hybrid of approaches, and they spliced together
16 approaches from various statutes, and the BFOQ approach
17 was taken from Title 7.
18 In Title 7, if you have a bona fide
19 occupational qualification that you have to be a
20 particular sex for a particular job, you never serve in
21 that job at all, and this question of transfer rights
22 doesn't arise, and there wasn't the kind of precise
23 focus on the drafting of the provision that might have
24 occurred if they had focused on this difference between
25 the two statutes when they were borrowing the provision

1 from the other.

2 But there are indications that we cite and
3 refer to in our committee reports that they thought of
4 the BFOQ as being limited to particular occupations, and
5 the whole thrust of the statute was to oppose the
6 mandatory retirement or other discriminations that would
7 prevent older workers from continuing to be a productive
8 part of the work force if they chose to be.

9 And I think the statute should be interpreted
10 in light of that purpose. The words certainly lend
11 themselves to it, as we explained in some detail in our
12 brief.

13 Now, I would like to, unless there are further
14 questions on that liability issue, I would like to turn
15 briefly to the liquidated damages provision, and the
16 proper statutory standard for determining what
17 constitutes a wilfull violation within the context of
18 this civil provision.

19 And I think in connection with this question,
20 but it also relates to the other one as well, perhaps
21 the most misleading thing about this case and the danger
22 of this case in interpreting the pertinent statutory
23 terms is that the facts here are so very far from the
24 typical case that Congress had in mind when they enacted
25 the liquidated damages provision initially in the Fair

1 Labor Standards Act, or when they carried it over into
2 the Age Discrimination and Employment Act.
3 They were not thinking of relatively well to
4 do employees such as these pilots who already qualify
5 for comfortable pensions. What they were thinking about
6 initially in the Fair Labor Standards Act were people
7 who weren't even getting the minimum wage, and perhaps
8 in a period of high unemployment had previously been
9 unemployed, and that if they were denied the minimum
10 wage, it could cause great hardships that were very hard
11 to measure.
12 They might miss installment payments or rent
13 payments and have to move in with relatives, or miss
14 their insurance payments. They might have to choose
15 between forfeiting various of these things, and they
16 said, all of this is obscure and hard to measure, and
17 the only way to make them whole, to compensate them, is
18 to have this liquidated damages provision, which was
19 considered a compensatory way of making them whole.
20 Now, in enacting the ADEA and carrying this
21 provision over, again Congress was thinking of workers
22 who would be hard pressed in their personal situations
23 by violations.
24 When Secretary Willard Wertz, the Secretary of
25 Labor, testified in support of the bill in the hearings,

1 the particular example that he gave in some detail was
2 of a 51-year-old factory worker who had been forced to
3 drop out of high school many years earlier and worked at
4 odd jobs, and finally worked himself up into a position
5 in a factory, and then the factory closed, and he found
6 himself in a position of having to apply for other jobs,
7 saying that his education was less than high school
8 education and he was 51 years old and wouldn't be able
9 to get it. And then he cited --

10 QUESTION: Of course, those examples are
11 always the kind that proponents of the bill give, but
12 then Congress enacts a general provision, and it covers
13 a lot more people than just the examples.

14 MR. WALLACE: That's right, but my point is
15 that this Court's interpretation of the statutory terms
16 are going to cover a lot more people than just the
17 plaintiffs in this case, and that it is important to
18 keep in mind the examples that were foremost in the
19 Congressional mind in enacting these provisions.

20 And if I may just finish this point, what the
21 Secretary cited to Congress was that over a third of all
22 men who have been unemployed 27 weeks or more, this
23 overall hard core unemployed, are over 45, although this
24 group makes up slightly less than a quarter of the work
25 force.

1 The percentage of older workers in this hard
2 core category was 34.3 percent last year, up from 30.2
3 percent in '65. More than half of the nation's poor
4 families are headed by persons 45 or over, more than a
5 third by persons 55 or over.
6 And it was in light of testimony of this sort
7 and discussions of this sort that the conference report
8 referred to the liquidated damages provision as
9 compensatory in nature rather than a penalty on the
10 employer, and quoted from this Court's decision in
11 Overnight Transportation Company against Missel, which
12 described this as the purpose of the Fair Labor
13 Standards Act's liquidated damages provision.
14 And it is against this background that we ask
15 the Court to consider the standard we have urged. We
16 don't think that Congress in enacting these provisions
17 had in mind that an employer who chose to make a legal
18 argument when he knew the Act applied but thought he
19 might have a legal argument that would prevail, we think
20 the intent of Congress was clear that in that situation,
21 if the employer is wrong in his legal argument, it is
22 the employer rather than the employee who should bear
23 the loss, and the employee should be fully compensated.
24 And that is the way the comparable limitations
25 provision on which this was based has also been

1 interpreted.

2 My time has expired.

3 CHIEF JUSTICE BURGER: Thank you, counsel.

4 Mr. Fay.

5 ORAL ARGUMENT OF RAYMOND C. FAY, ESQ.,

6 ON BEHALF OF THURSTON, ET AL.

7 MR. FAY: Mr. Chief Justice, and may it please

8 the Court, this is not a case about what type of

9 accommodation should be given to workers of any age. It

10 is a case about whether pilots approaching age 60 who

11 wish to transfer to the flight engineer position are

12 treated less favorably because of their age.

13 The appropriate universe of pilots here to

14 consider is all of those pilots who lose their

15 qualifications for whatever reason and need or want to

16 transfer to the flight engineer position.

17 This, both in the District Court and in the

18 Court of Appeals, was a summary judgment case. There is

19 no dispute that all, every single one of the younger

20 pilots who had sufficient seniority to transfer were

21 allowed to transfer to the flight engineer position.

22 Only the 60-year-olds were not allowed to in some

23 instances.

24 There were some questions from the bench about

25 bids. It should be understood that pilots on TWA, like

1 all airlines, move around from one position to the
2 other, up, down, by mechanisms other than bids. TWA
3 states that bidding is the basic mechanism in its
4 contract for openings, but that is a term of art.
5 That bidding applies when the airline is
6 expanding its operations and there are new openings,
7 usually for people to move up the ladder. In the same
8 section of TWA's contract which governs the movement of
9 pilots, it shows that pilots also move by other means,
10 displacements, or bumps, as they are called, and
11 assignments, and with respect to the questions regarding
12 automatic downbidding rights of those other people who
13 are disqualified from their pilot positions, such as the
14 medically disqualified, or the disciplinary downgrades,
15 those people don't submit bids in all instances.
16 In some cases when a pilot goes off of the
17 active work force because of medical disability,
18 although that initial medical disability is
19 unanticipated, that pilot will go through a long process
20 of regaining his medical qualifications, and he will
21 make an active decision once he gets recertified when to
22 come back to work.
23 Now, under the pilot contract he either may
24 submit a bid or he may displace a pilot with less
25 seniority. Now, those pilots are allowed to use their

1 seniority rights to displace a less senior pilot. A
2 better example is the disciplinary downgrades which
3 TWA's head of manpower planning testified had occurred
4 in many instances over many years.
5 That doesn't involve a contractual provision
6 at all. There is nothing in that contract that TWA has
7 with its pilots that talks about disciplinary
8 downgrades. The company simply says, we are going to
9 punish you because you made a mistake as captain, and
10 you are going to go back to co-pilot for two months, or
11 you are going to go back to flight engineer for two
12 years, or, in the instance that is in the record here,
13 you are going to go back to flight engineer
14 permanently.
15 QUESTION: But isn't that subject to the
16 grievance procedure?
17 MR. FAY: It is --
18 QUESTION: Yes, it is.
19 MR. FAY: Yes, it is subject to the grievance
20 procedure, Your Honor, but we are talking about whether
21 bidding is the appropriate universe here. Bidding is
22 not the appropriate universe, because pilots may move
23 around by other means.
24 With regard to the BFOQ argument that ALPA
25 makes, the legislative history, the 1978 legislative

1 history in particular, is clear that all Congress was
2 talking about in 4(f)(1) is the particular job in
3 question. The BFOQ, if it is sought to be asserted for
4 a position not involving a transfer, then perhaps the
5 BFOQ exception would apply.

6 But reading the legislative history as a
7 whole, there is no indication that Congress had the
8 transfer question on its mind, but similarly, there is
9 no question that the issue of transfer is one that is
10 covered by the Age Act, because the Age Act in Section
11 4(a)(1) not only talks about hiring and firing, but in
12 Section 4(a)(2) it also talks about anything that would
13 tend to deprive a person of employment opportunities,
14 the conditions, the terms, and the privileges of
15 employment.

16 Now, so that we have a complete view of the
17 record, I would like to bring the case back for a minute
18 to where it began in 1978. In 1978, when TWA refused
19 the transfer requests of Captain Thurston and three of
20 the EEOC claimants, and required them to retire in that
21 year, it didn't have any captains employed in the flight
22 engineer position beyond age 60.

23 TWA talks about the 60 people who later
24 transferred from captain to flight engineer.

25 QUESTION: Just what difference would that

1 make in the whole --

2 MR. FAY: Because when Captain Thurston asked
3 to transfer to flight engineer, the response he got from
4 the company was not that he didn't have a bid on file,
5 but that he was about to reach the mandatory retirement
6 age that had been agreed to by the union and the
7 company.

8 So, there was a -- that stark difference in
9 treatment because of age is plainly -- is plain to see.
10 It was not because he didn't have a bid, or hadn't
11 submitted the appropriate papers for transfer. It was
12 solely because of his age.

13 Now, that practice did change a little bit
14 later, but TWA makes it sound like nothing began until
15 it announced that it was going to employ people past
16 60. The majority of the remaining plaintiffs and the
17 EEOC claimants in this case turned 60 and were required
18 to retire long before TWA actually employed any captains
19 in that flight engineer position beyond age 60.

20 Now, for those later EEOC claimants, it was
21 not a total brick wall, but the difference in treatment
22 was still the same. It was based on age, because all
23 the pilots who were younger and 60 and wished to
24 transfer, if they had sufficient seniority, they could
25 do so. The age 60 people were not allowed to do so.

1 Now, with regard to the seniority question,
2 maybe one other clarifying point. The flight engineer
3 job is a different job. It is not covered by the FAA's
4 age 60 rule, which precludes captains and first officers
5 from flying beyond age 60.
6 However, there is a single integrated
7 seniority list on TWA, and the general seniority
8 provision on TWA says that the senior person gets the
9 preference, and with that ingrained part of the
10 seniority system, it is easy to see why the second
11 circuit concluded that the plaintiffs here were not
12 challenging the seniority system.
13 Indeed, they were trying to use their
14 seniority under TWA's system and under the law to obtain
15 the flight engineer position. Judge Van Grafelin in his
16 dissent had it backwards.
17 Captain Thurston and the others were not
18 trying to take a nine-year furlough or even a one-day
19 furlough and get back into the system. They were
20 seeking to assert their rights as pilots, senior pilots,
21 to transfer to the flight engineer position before age
22 60.
23 So, the AIPA question of whether a BFOQ
24 applies does not even come up for those people, because
25 they sought to use their existing seniority to

1 transfer.

2 Finally, the FAA's age 60 rule, of course,

3 does not speak to employment as such at all. It only

4 covers service as a pilot, and does not tell TWA how to

5 run its employment business. So, the fact that the

6 FAA's age 60 rule precluding service as a pilot applies

7 does not preclude service from a flight engineer on

8 TWA.

9 Unless there are questions, I will conclude my

10 argument.

11 QUESTION: Could I ask you, what about the

12 wilfullness issue? What is your position on that?

13 MR. FAY: Our position is the same as the

14 EEOC. It is not -- in our briefs we show that there is

15 no difference under the statute for saying that wilfull

16 means anything different than it means in --

17 QUESTION: That issue is here, isn't it?

18 MR. FAY: That issue definitely is here, and I

19 might add, Your Honor, that we supported TWA --

20 QUESTION: I guess we wouldn't need to decide

21 it if we decided there was no liability.

22 MR. FAY: That's right. We supported TWA on

23 that issue --

24 QUESTION: Right.

25 MR. FAY: -- in our opposition to the petition

1 for certiorari, so we believe the case is
2 indistinguishable from the Perini, North River Parks
3 Associates case which EEOC has cited in its reply
4 brief.
5 Thank you.
6 CHIEF JUSTICE BURGER: Do you have anything
7 further?
8 MR. OECHLER: Yes. Thank you, Your Honor.
9 CHIEF JUSTICE BURGER: You have four minutes
10 remaining.
11 ORAL ARGUMENT OF HENRY J. OECHLER, JR., ESQ.,
12 ON BEHALF OF TWA - REBUTTAL
13 MR. OECHLER: If I may just briefly address
14 the wilfullness question, the statute in Section 7(b)
15 says the liquidated damages or double damages should
16 only be provided, only -- that's the word in the statute
17 -- only provided in the case of a wilfull violation.
18 Now, the EEOC says that the standard for
19 liquidated damages is if the employer knew that its
20 conduct was governed by the ADEA. That is all the
21 employer has to know, and it concedes that, quote, end
22 quote, only in the rarest of cases will an employer not
23 know that its conduct was going to be covered by the
24 ADEA.
25 He is going to have to be living in a tunnel

1 not to know that his conduct was governed by the ADEA,
2 and in fact under the ADEA he is required to post a
3 statute, so he certainly is going to have to know that
4 his conduct is governed by it.

5 Now, either the word "only" means something,
6 and it means that there is a two-tiered level of
7 liability, and in our brief we discuss the fact that
8 that is what we believe the legislative history
9 supports, or it doesn't, and we suggest that Senator
10 Javits, when he inserted the provision about liquidated
11 damages, it was a substitute for a criminal provision,
12 and two circuits have held that that was meant to be
13 punitive in nature.

14 And yet what the EEOC says is, all you have to
15 do is know that your conduct was governed by the ADEA,
16 therefore we hold you liable for double damages. Now,
17 we submit that what is required is a specific intent to
18 violate the ADEA, and that is what was meant, that was
19 what was meant by the insertion of that provision,
20 because that was what -- that was what Senator Javits
21 meant by the fact that it should be punitive.

22 Now, I do want to go back for a moment to this
23 whole question of liability. The provisions that the
24 plaintiffs talk about were just as available to everyone
25 on the TWA pilot work force. They were available to

1 Captain Thurston and they were available to everyone
2 else. They are admittedly non-age reasons, and what
3 they want to do is take that non-age provision and say,
4 okay, now, add TWA a new provision that says for age I
5 am entitled to revert to flight engineer.

6 And we say that is apples versus oranges, as
7 Justice Van Grafelin said. Now, the subject that
8 counsel raised about disciplinary downgrades is
9 addressed in Note 15 of our brief. The only instance
10 that this disciplinary downgrade arose during the course
11 of this entire litigation involved somebody who had a
12 specific prior right that was given to him by a
13 Presidential commission 20 years ago for a non-age
14 reason.

15 And because of that, we felt we had -- because
16 we were bound by certain arbitration provisions under
17 the contract, we had no choice but to allow him to go
18 down to that position. Now, TWA directed -- when TWA --
19 when the law was passed in April, 1978, TWA still
20 continued to retire people until it adopted its policy
21 in August of '78.

22 Once it adopted its policy, it reinstated
23 those people who were in the flight engineer position.
24 If Captain Thurston had been able to bid, and there was
25 no vacancy between April and June, but there were

1 vacancies in the spring of '78, prior to the enactment
2 of the law, if he had been able to bid and had gotten
3 the flight engineer bid back in the spring of '78, TWA's
4 director, TWA's vice president of flight operations said
5 in his deposition at Page 268 that then he would have
6 been considered for serving as a flight engineer, and
7 been considered for reinstatement at that time.

8 But when he arrived, and he was a captain, we
9 had nothing we could do with him under the bidding
10 procedures of the contract. If you look at JA466 of the
11 record, you see a sample bid. In fact, you see Captain
12 Thurston's --

13 CHIEF JUSTICE BURGER: Your time has expired
14 now, Mr. Oechler.

15 MR. OECHLER: Oh, thank you. I am sorry. I
16 didn't see that.

17 CHIEF JUSTICE BURGER: Thank you, gentlemen.
18 The case is submitted.

19 (Whereupon, at 2:15 o'clock p.m., the case in
20 the above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#83-997 - TRANS WORLD AIRLINES, INC., Petitioner v. HAROLD H. THURSTON, ET AL; and #83-1325 - AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, Petitioner v. HAROLD H. THURSTON, ET AL.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

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