MARITAL RESTRICTIONS ON STEWARDESSES: IS THIS ANY WAY TO RUN AN AIRLINE?

It will need more than the Nineteenth Amendment to convince me that there are no differences between men and women . . . .

Oliver Wendell Holmes

Miss Eulalie De Blois, a stewardess for Delta Air Lines, was required by her contract of employment to resign should she marry.[1] After five and a half years with Delta, Miss De Blois secretly became Mrs. Cooper. Five months later the airline learned of her marriage and demanded her resignation. She refused to resign and consequently was discharged. Thereafter, the Louisiana Unemployment Compensation Board denied her application for unemployment compensation, finding that she had "voluntarily" left her employment without good cause.[2] Upon resort to the state courts, the Board's decision was affirmed.[3]

Although Mrs. Cooper argued that she did not voluntarily leave her work,[4] but was in fact unwillingly dismissed, the act which brought

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[1] Cooper v. Delta Air Lines, Inc., 274 F. Supp. 781-82 (E.D. La. 1967).

[2] LA. REV. STAT. ANN. § 23:1601 (1964) provides:

An individual shall be disqualified for benefits:

(1) If the administrator finds that he has left his employment without good cause connected with his employment. . . .

(2) If the administrator finds that he has been discharged for misconduct connected with his employment.

[3] The proceedings were begun in the District Court for Jefferson Parish, which affirmed the Board's ruling. Mrs. Cooper then appealed to Louisiana's 4th Circuit Court of Appeal, which affirmed the district court. Cooper v. Doyal, 205 So. 2d 59 (La. Ct. App. 1967).

Mrs. Cooper also brought an action under § 703 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) (1964), seeking reinstatement, back pay, and an injunction against the airline. Cooper v. Delta Air Lines, Inc., 274 F. Supp. 781 (E.D. La. 1967). See text accompanying notes 26-28 *infra*.

[4] Although the court found that Mrs. Cooper had voluntarily left her job without good cause, and was thereby disqualified, the court implied, despite its denial, that her discharge was warranted as a penalty for misconduct which deprives a claimant of benefits. LA. REV. STAT. ANN. § 23:1601(2) (1964). Confusing the criterion of misconduct with its notion of voluntary resignation, the court wrote that she "untruthfully" represented her plans and then proceeded to marry "in willful breach" and "violation" of her agreement. 205 So. 2d at 62. But Mrs. Cooper's failure to resign is not, as the Board agreed, misconduct within the meaning of the unemployment law, which requires "an act of wanton or willful disregard of the employer's interests, a deliberate violation of the employer's rules, and a disregard of standards of behavior which the employer has a right to expect." Sewell v. Sharp, 102 So. 2d 259, 261 (La. Ct. App. 1958). Though violative of a company rule of tenure, there is no suggestion that Mrs. Cooper's secret marriage adversely affected Delta's operations, nor is there any evidence that her work otherwise failed to meet the standards set by the airline.

Furthermore, the marriage itself was not "connected with employment." LA. REV. STAT. ANN. § 23:1601(2) (1964). Rather it was "a consequence of the personal life

about her discharge—her marriage—was presumably a voluntary one. Unemployment compensation is intended to support the individual who has become unemployed through no affirmative act of his own.[5] Marriage, however, is (usually) an asserted choice of a continuing personal status.[6] Hence, the individual who chooses thus to disqualify himself for his job is not within the protective scope of the legislation.[7]

Although Louisiana law prohibits any waiver, direct or indirect, by an individual of his rights to unemployment compensation,[8] the acceptance of employment with a condition not to marry is no more a de facto waiver than are contract terms such as dress or hours. However, the validity of this prohibition of marriage turns on its reasonableness in relation to the job.[9] Should the condition not be reasonably related, it is void to the extent that it forces the employee to waive his right to unemployment compensation.[10] The court found two bases on which the airline's requirements could be justified: first, that a possible pregnancy might endanger the physical safety both of the stewardess and of the passengers in her care; and second, that the personal mobility required of stewardesses might "jeopardize her marriage." [11]

The essence of the physical safety rule appears in *Bowe v. Colgate-Palmolive Co.*,[12] which validated a company rule barring women from jobs that required the lifting of weights of thirty-five pounds or more, because the rule was based on "significant and meaningful biological

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of claimant and should not be a disqualifying act unless directly affecting his employment." Jackson v. Administrator, 128 So. 2d 915, 917, 918 (La. Ct. App. 1961). Moreover, in *Jackson,* the business of the employer was directly interrupted by the intrusions of the employee's creditors; Mrs. Cooper's employer, on the other hand, was in no way harassed by her husband.

[5] LA. REV. STAT. ANN. § 23:1471 (1964). The objective of the act is social security, sought by "encouraging employers to provide more stable employment." The Act purports to protect the employee from the capriciousness of the market and his employer, but not from the consequences of his personal decisions.

[6] Voluntariness could not of course be imputed to a termination based on an inevitable event, such as increasing age. *See, e.g.,* Warner Co. v. Unemployment Compensation Bd., 396 Pa. 545, 153 A.2d 906 (1959) (retirement mandatory at 68 under contract; involuntary). *See also* Smith v. Unemployment Compensation Bd., 396 Pa. 557, 154 A.2d 492 (1959) (pregnancy).

[7] By administrative ruling, New York unemployment insurance law provides that "[i]f a married . . . woman leaves her employment because of the employer's rule against continued employment of married . . . women, such leaving is involuntary." N.Y. Unemployment Ins. Law, 2 P-H Soc. SEC. & UNEMPLOYMENT COMP. ¶ 27,811 (Oct. 31, 1962) (explanatory note). Louisiana law ordinarily assumes otherwise, that the choice is a voluntary one. Barring an administrative mandate like that in New York, the assumption seems justifiable.

[8] LA. REV. STAT. ANN. § 23:1691 (1964).

[9] Brown v. Southern Airways, Inc., 170 So. 2d 245 (La. Ct. App. 1964), *quoted in* Cooper v. Doyal, 205 So. 2d 59, 61 (La. Ct. App. 1967).

[10] Warner Co. v. Unemployment Compensation Bd., 396 Pa. 545, 153 A.2d 906 (1959). Like Louisiana, Pennsylvania prohibits agreements to waive compensation. PA. STAT. ANN. tit. 43, § 861 (1964).

[11] Cooper v. Doyal, 205 So. 2d 59, 62 (La. Ct. App. 1967).

[12] 272 F. Supp. 332 (S.D. Ind. 1967).

and psychological differences between the sexes." [13] The crucial "difference" identified in *Cooper* is the possibility of undiscovered pregnancy. By relying on a series of decisions that assert the prima facie legitimacy of a marriage ban,[14] the state court avoided evaluating the reality of this hazard. In fact, there is little substance to the objection, for air travel during a normal pregnancy is not hazardous.[15] Nor is the pregnancy likely to interfere with performance of the stewardess's duties while still undetected.[16] The airlines themselves frequently recall married stewardesses in times of need, further belying the equation of pregnancy, illness, and disability with the state of marriage.[17] In view of the Supreme Court's recent assertion that marriage is "one of the 'basic civil rights of man,' fundamental to our very existence" and "essential to the orderly pursuit of happiness by free men," [18] it is hard to justify the attempted prohibition on the basis of such a speculative danger.[19]

The necessity for personal mobility was improperly analyzed by the state court, which took the traditional view of the married woman as the domesticated, subservient partner in the relationship. Given Mrs. Cooper's willingness and capacity to work, it is hard to see how her marriage has *any* relationship to her employer's business. Apart from the inherent absurdity of protecting marriage by forbidding it in

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[13] *Id.* at 364. The case is currently pending on appeal; the EEOC has filed an amicus curiae brief on behalf of the plaintiff. Letter from Sonia Pressman, Senior Attorney (Office of the General Counsel), EEOC, to the *University of Pennsylvania Law Review*, Nov. 21, 1968.

[14] Huiet v. Atlanta Gas Light Co., 70 Ga. App. 233, 28 S.E. 2d 83 (1943); Czarnecki v. Unemployment Compensation Bd., 185 Pa. Super. 46, 137 A.2d 844 (1958), *overruled in* Warner v. Unemployment Compensation Bd., 396 Pa. 545, 153 A.2d 906 (1959). At the time of these cases, which provide the basis for this conclusion cited from Brown v. Southern Airways, Inc., 170 So. 2d 245, 247 (La. Ct. App. 1964), there was no anti-discriminatory standard against which to evaluate the rules banning married female employees. In view of the new federal standard of reasonableness, these provide paltry precedent.

[15] *See* J. WILLSON, MANAGEMENT OF OBSTETRICAL DIFFICULTY 80 (rev. ed. 1961).

[16] "An airline may, however, require pregnant stewardesses to take a maternity leave of absence a specified time prior to delivery." Letter from Sonia Pressman, *supra* note 13.

[17] Moreover, even if a medical hazard were involved, it would seem an unreasonable precaution under the policy of the unemployment statute, *see* note 5 *supra*, to disqualify an entire class of employees on the possibility of undetected pregnancy, a possibility hardly limited to married women.

[18] Loving v. Virginia, 388 U.S. 1, 12 (1967).

[19] *See also* Barber v. Air France, 1963 D. Jur. 428 (cour d'Appel, Paris), involving an Air France stewardess's discharge upon her marriage:

> The right to marry is an individual's right of public order which cannot be limited or removed; therefore, under the private law in the sphere of contractual relations which are subject to certain remunerations the right to marry must be safeguarded in principle and, in the absence of evident overriding reasons, a clause forbidding this right must be declared null and void in view of its character of attacking a fundamental right.

See generally Note, *Marriage, Contracts, and Public Policy*, 54 HARV. L. REV. 473 (1941).

this context, there is no reason for the purposes of this occupation, to distinguish even the traditional, restrictive concept of the marriage relationship from other dependencies, such as sharing a home with an aged or invalid parent, which could as easily curtail mobility. But even if "a transfer might jeopardize her marriage," [20] the choice of the stewardess is a personal one. Whatever social policy the airlines may prefer is irrelevant unless they can demonstrate that married stewardesses interfere with airline operations.

The experience of the industry suggests that they do not. Foreign airlines do not generally discharge stewardesses upon marriage.[21] And, in the United States, over fifty per cent of those airlines that responded to an EEOC survey in 1967 reported that they did not dismiss married stewardesses.[22] Finally, a substantial number of stewardesses, like Mrs. Cooper, continued their careers successfully after secretly marrying, causing no apparent detriment to the airlines.[23]

Although the state court made no mention of any such factor, airlines have attempted to justify the ban on marriage on the basis of customer preference.[24] Thus, the rule purports to be "rationally related to an end which [the employer] has a right to achieve—production, profit, or business reputation." [25] The justification is a specious one. Unable to meet the standard of either reason or necessity, it is certainly untenable under the Civil Rights Act of 1964.[26] First, it serves inevitably to enforce the traditional assignment of roles that Congress sought to proscribe in the Act.[27] Second, the Act itself implicitly excludes profit and business reputation from lessening the prohibition

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[20] 205 So. 2d at 62.

[21] Neal v. American Airlines, Inc. (Decision of EEOC No. 6-6-5759, June 20, 1968), CCH EMPLOYMENT PRAC. GUIDE ¶ 8002, at 6009 (Aug. 23, 1968).

[22] The EEOC received responses from 25 of the 48 airlines certified in the United States. "Of these 25, 12 did not require the termination or reassignment of stewardesses on marriage; 2 had options to terminate stewardesses 6 months after marriage, which have not been exercised in recent years; 6 terminated stewardesses on marriage; and 5 had various policies." Neal v. American Airlines, Inc., CCH EMPLOYMENT PRAC. GUIDE ¶ 8002, at 6011 n.21 (Aug. 23, 1968).

[23] This became clear when numerous stewardesses in the employ of American Airlines revealed their marriages in the mistaken belief that termination would not be automatic under their revised contract. Neal v. American Airlines, Inc., CCH EMPLOYMENT PRAC. GUIDE ¶ 8002, at 6007 (Aug. 23, 1968).

[24] *See* Cooper v. Delta Air Lines, Inc., 274 F. Supp. 781 (E.D. La. 1967).

[25] Note, *Classification on the Basis of Sex and the 1964 Civil Rights Act*, 50 IOWA L. REV. 778, 795 (1965).

[26] 42 U.S.C. § 2000e-2(a)(1) (1964) makes it unlawful for an employer "to discharge any individual . . . because of such individual's . . . sex . . . ." Sex discrimination is permissible only when "reasonably necessary to the normal operation of that particular business." 42 U.S.C. § 2000e-2(e)(1) (1964). No exception is permitted in the interest of economic gain.

[27] *See* Note, *supra* note 25, at 794-98. A qualification for employment must be based on objective reason, not on mores. To allow customers' preferences to dictate qualifications may be to give precedence to traditions entailing just that prejudice sought to be prohibited. *See* 110 CONG. REC. 2577-84 (1964) (remarks of Representatives Green and Cellar).

of employment discrimination.[28] Furthermore, the rationale is itself unfounded. In 1965, the Airways Club—an organization of 25,000 airline passengers (mainly businessmen)—conducted a survey of its members' preferences. Only one-sixth of those responding indicated any preference for unmarried stewardesses.[29] Finally, if *all* airlines must employ stewardesses without regard to their marital status, no single airline will suffer by reason of the small number of disappointed customers.

Clearly, reason does not require that a stewardess remain single. Accordingly, the court's failure to protect her from the arbitrary restriction through use of the state's unemployment compensation law is disturbing.[30] But the particular issue has subsequently been mooted by developments on the federal side. The EEOC, disgruntled by the decision in *Cooper v. Delta Air Lines, Inc.*,[31] applied a previous rule against marriage-bans for women employees[32] to stewardesses in the summer of 1968.[33] Since that time, all major airlines have abandoned their restrictions pursuant to union negotiations.[34] Mrs. Cooper's case, pending on appeal, was dropped in November of 1968[35] when Delta rescinded its marriage ban. Outside the courts, in other words, reason prevailed. And so did Mrs. Cooper.

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[28] 42 U.S.C. § 2000e-2(e)(1) (1964). *See* note 26 *supra*.

[29] To the question, "Should a stewardess be unmarried?" 862 persons answered "yes," 1445 answered "no," and 2827 answered "don't care." Neal v. American Airlines, Inc., CCH EMPLOYMENT PRAC. GUIDE ¶ 8002, at 6004 n.17 (Aug. 23, 1968).

[30] See note 5 *supra*.

[31] 274 F. Supp. 781 (E.D. La. 1967). The Commission's explicit disagreement appears in Neal v. American Airlines, Inc., CCH EMPLOYMENT PRAC. GUIDE ¶ 8002, at 6009 (Aug. 23, 1968).

[32] The Commission had repeatedly declared that a rule discriminating against married women is in violation of Title VII of the Civil Rights Act of 1964. BNA FAIR EMPLOYMENT PRAC. ¶ 1604.3, at 401:28b (1968) (rules of EEOC); *id.* at 401:1010 (1967) (legal interpretations of EEOC); *id.* at 401:3013 (1966) (General Counsel's opinions).

[33] Neal v. American Airlines, Inc., CCH EMPLOYMENT PRAC. GUIDE ¶ 8002, at 6006, 6009 (Aug. 23, 1968).

[34] Shortly after the EEOC issued its decisions on August 23, 1968, American Airlines agreed with the Air Line Stewards and Stewardesses Association of the Transport Workers Union of America, AFL-CIO, to abandon its maximum age and marital restrictions on stewardesses. Letter from Sonia Pressman, Senior Attorney (Office of General Counsel), EEOC, to the *University of Pennsylvania Law Review*, Sept. 14, 1968. Delta Air Lines and United Airlines followed suit in November 1968.

[35] Letter from Bernard Marcus, Esq., to the *University of Pennsylvania Law Review*, Nov. 8, 1968.