

## **Massachusetts Supreme Court backs Transit in lawsuit on bias, worker seniority - Union considered hiring a violation**

by John R. Ellement

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The state's highest court ruled yesterday that the MBTA can bypass union seniority when the public transit agency moves to end discrimination in its ranks.

In a complex case aimed at drawing a line between union contracts and management efforts to end bias against women, minorities, and the disabled, the Supreme Judicial Court said protecting people from discrimination must override seniority rules.

The case involved William Wick, who was denied a job in 1999 as a rail repairman after he failed a hearing test because he was forbidden to wear his hearing aids, according to court records.

Wick won a favorable ruling from the Massachusetts Commission Against Discrimination, and the T agreed to hire him in 2004 and made his start date 1999, giving him five years of seniority.

Boston Carmen's Union Local 589 considered the Wick deal a violation of its contract and persuaded both an arbitrator and a Suffolk Superior Court judge to overturn the Wick settlement.

But in a unanimous ruling, the SJC said the T made the right call.

"Where the settlement is presumptively legitimate and where the union has not shown that the settlement was a sham and in derogation of the collective bargaining agreement, public policy required the collective bargaining agreement to yield to Wick's settlement agreement," Justice Francis X. Spina wrote for the court.

He added: "The arbitrator's decision to the contrary effectively perpetuates the MBTA's likely discriminatory conduct, and it effectively deprives Wick of the remedy to which he is entitled: retroactive seniority. It therefore violates public policy."

Allan W. Drachman, an arbitrator and a member of the Massachusetts Bar Association's section on employment law, said by phone that the SJC had taken the rare step of tossing out an arbitrator's ruling in the name of broader public policy concerns.

"This is the first time that I can recall, either in the public or private sector, where the court has said protecting a settlement of a discrimination claim deserves public policy protection," the Wayland attorney said.

Drachman said that courts have brushed aside seniority rights to settle racial bias allegations and that the SJC was giving that concept a broader reach in its ruling.

Mary Jo Harris, a Boston lawyer who argued the case for the Massachusetts Bay Transportation Authority, applauded the SJC's conclusions. "This is a significant decision," she said. "It confirms that the MBTA has an inherent managerial right to run its business."

A spokesman for the Carmen's Union could not be reached for comment yesterday. In court papers, the union argued that its members lost seniority when Wick was ordered onto the payroll.

In the same ruling, the SJC tackled another offshoot of the management-union struggle at the MBTA. In that instance, the high court said the union, the arbitrator, and the Superior Court judge got it right, concluding that the T should have negotiated with its unions before it scrapped a promotion list for spare bus inspectors in 2001.

At the time, the T was being observed by the attorney general's office because of chronic bias in the agency.

But the SJC said there was no evidence that the T's actions caused discrimination or eliminated bias.

"Although the MBTA was free to alter or modify the criteria it used to appoint persons to the spare inspector master list, as it alone determined, once the appointment was made, seniority status attached, and the MBTA could not unilaterally strip employees of that status," Spina wrote.

He added, "The appropriate procedure would have been to enter negotiations with the union."