Supreme Court rules for Muslim job applicant

by Warren Richey

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(*The Christian Science Monitor*) Clothing retailer Abercrombie & Fitch lost at the U.S. Supreme Court on Monday in a case filed by a Muslim teenager who was turned down for a job because she wore a religious headscarf.

In an 8-to-1 decision, the nation's highest court said that the company had an obligation under Title VII of the Civil Rights Act to offer the job applicant a religious accommodation, even though she never asked for one.

The decision puts American employers on notice: "An employer may not make a job applicant's religious practice, confirmed or otherwise, a factor in employment decisions."

Abercrombie officials had said they decided not to hire the teen, Samantha Elauf, because her black headscarf clashed with the company's strict dress code against wearing black clothing and head coverings. They added that the teenager never informed the company that she desired a religious accommodation.

Rejecting those rationales, the high court said that a company engages in intentional discrimination when it acts in part with the motive to avoid providing a religious accommodation.

A neutral policy barring all employees from wearing headscarves does not exempt a company from providing a religious accommodation allowing some employees to wear headscarves for religious purposes, the court said.

"Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices," Justice Antonin Scalia wrote in the seven-page majority opinion. "Rather, it gives them favored treatment, affirmatively obligating employers not to fail or refuse to hire or discharge any individual ... because of such individual's religious observance and practice."

The majority justices also concluded that the anti-discrimination statute did not impose a requirement that the company know how its policies might burden religious practices. Instead, the law looks to the would-be employer's motives in deciding not to hire someone, the court said.

"An employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his motive," Scalia said. "Conversely, an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed."

In issuing its decision the high court reversed a decision by the Tenth U.S. Circuit Court of Appeals ruling in favor of Abercrombie. A company spokeswoman, Carlene Benz, said Monday's Supreme Court "did not determine that Abercrombie and Fitch discriminated against Ms. Elauf." The high court remanded the case to the Tenth Circuit "for further consideration consistent with this opinion."

"We will determine our next steps in the litigation," she said.

Justice Samuel Alito issued an opinion concurring in the court's judgment. But he objected to the majority's conclusion that the law does not require an employer's knowledge of a burdened religious practice.

"Suppose the interviewer thought Elauf was wearing the scarf for a secular reason," Justice Alito wrote. "If [the anti-discrimination law] does not impose a knowledge requirement, Abercrombie would still be liable. . . . The statutory text does not compel such a strange result."

Justice Clarence Thomas issued the lone dissent. He said Abercrombie's enforcement of a neutral policy prohibiting all employees from wearing headscarves in its stores did not amount to intentional discrimination.

In refusing to create an exception to its policy, the company "did not treat religious practices less favorably than similar secular practices," he said.

He noted that the effects of the Abercrombie policy fell more harshly on those who wear headscarves for religious reasons. But, he said, that was merely a disparate impact, not intentional discrimination.

“Elauf received the same treatment from Abercrombie as any other applicant who appeared unable to comply with the company’s Look Policy,” he said.

The high court’s decision stems from a lawsuit filed by the Equal Employment Opportunity Commission on Elauf’s behalf.

In 2008, Elauf, then 17, applied for a sales associate position at an Abercrombie Kids store in Tulsa, Oklahoma. She was interviewed for a position but was not offered a job. Later she learned from a friend that she wasn’t offered a job because of her headscarf. That’s when she went to the EEOC.

A federal judge sided with Elauf, and a jury awarded her $20,000 in compensatory damages.

On appeal, a divided panel of the Tenth Circuit reversed the district court’s decision and ruled, instead, for Abercrombie.

The appeals court said that the company could not be held liable for failing to provide a religious accommodation when it had never been given actual notice by the job applicant of a need for a religious accommodation.

In reversing the appeals court, the Supreme Court said there was nothing in the statute requiring an employer to have actual knowledge of a conflict between a religious practice and a work rule.

The Tenth Circuit’s approach “asks us to add words to the law to produce what is thought to be a desirable result,” Scalia said. “That is Congress’s province. We construe Title VII’s silence as exactly that: silence.”

Scalia added that the law’s disparate treatment provision “prohibits actions taken with the motive of avoiding the need for accommodating a religious practice.”

“A request for accommodation, or the employer’s certainty that the practice exists, may make it easier to infer motive,” Scalia said, “but it is not a necessary condition of liability.”

Since the lawsuit, Abercrombie has changed its hiring policy and settled similar cases.

The case was *EEOC v. Abercrombie & Fitch Stores Inc.* (14-86).