

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1419
Summary Calendar

RICHARD L. THURMAN,

Plaintiff/Counter-
Defendant-Appellant,

versus

DALTEX CAPITAL CORPORATION,
d/b/a Regency Apartments,

Defendant/Counter-
Plaintiff-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:90-CV-0547-G)

(January 6, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit
Judges.

POLITZ, Chief Judge:*

Richard Thurman appeals *pro se* the judgment of the district
court dismissing his religious discrimination action against Daltex
Capital Corporation No. 2. Finding no error we affirm.

*Local Rule 47.5 provides: "The publication of opinions that
have no precedential value and merely decide particular cases on
the basis of well-settled principles of law imposes needless
expense on the public and burdens on the legal profession."
Pursuant to that Rule, the Court has determined that this opinion
should not be published.

Background

On May 4, 1988 Daltex hired Thurman as a porter for the Regency Apartments. The porters' duties required them to maintain the appearance of the grounds, clean the laundry rooms, and perform other similar duties. After he was hired Thurman advised Daltex that he did not want to work on Sundays because it conflicted with his church activities. Thurman was an associate minister at the Greater Mount Hebron Baptist Church. To accommodate Thurman's religious practices Daltex allowed Thurman to trade shifts with another porter so that Thurman would work Saturdays and the other porter would work Sundays. This continued until the other porter left. Daltex then hired a resident at the Regency Apartments as a weekend porter.

Hiring a weekend porter caused dissatisfaction among other Daltex employees, specifically the maintenance men who complained that it was unfair that they had to work weekends while the full-time porters did not. The weekend porter later moved and Daltex decided against replacing him because of the adverse effect on the morale of the other employees. Daltex then informed the porters that they would have to again rotate the weekend shifts. The other porters were unwilling to trade Sunday shifts with Thurman. Daltex advised Thurman that he would have to work for one to three hours every third Sunday, but Daltex allowed Thurman the flexibility to perform his duties so as not to conflict with church services. Thurman's church activities began at 9:45 a.m. and sometimes lasted until 6:00 p.m. Unwilling to work on Sundays

Thurman quit.

Thurman timely filed a discrimination charge with the Equal Employment Opportunity Commission and, following the issuance of a right-to-sue letter, filed the instant complaint claiming that Daltex discriminated against him for his religious beliefs and practices in violation of Title VII. The district court referred the matter to a magistrate judge to act as a special master pursuant to Fed.R.Civ.P. 53. The special master conducted a hearing and filed findings of fact and conclusions of law which were adopted by the district court which concluded that Thurman failed to prove he advised anyone at Daltex that it was against his religious beliefs to work on Sundays. The district court did find that Thurman made a *prima facie* showing that he was discriminated against because of his religious practices. The district court concluded, however, that Daltex met its burden of establishing that it reasonably accommodated Thurman's religious practices and that any further accommodation would have imposed undue hardship upon Daltex. Thurman timely appeals.

Analysis

Thurman first claims that the district court erred in adopting the special master's findings that he failed to establish a *prima facie* case that his religious beliefs conflicted with an employment requirement which he had made known to Daltex. We are not persuaded. An employee proves a *prima facie* case of religious discrimination by showing that he or she (1) holds a religious

belief or engages in a religious practice that conflicts with an employment requirement; (2) informed the employer of this fact; and (3) was disciplined for failure to comply with the conflicting employment requirement.¹ The special master's findings of fact which were adopted by the district court must be affirmed unless clearly erroneous.² Upon review of the record, we find it was not clear error for the district court to find that there was no evidence that Thurman ever informed a representative of Daltex that his religious beliefs prohibited him from working on Sunday.

In addition, Thurman claims that the district court and special master erred in finding that, although he established a *prima facie* case that he was discriminated against because of his religious practices, Daltex then met its burden of showing that it was unable to reasonably accommodate his religious needs without undue hardship.³ We find his claim meritless in light of Daltex's many attempts to accommodate Thurman before coming to the conclusion that Thurman had to work on Sundays. Daltex tried two different approaches which were temporarily successful. Thereafter, Daltex would have allowed Thurman to trade working

¹**Jenkins v. State of La. Thru Dep't of Corrections**, 874 F.2d 992 (5th Cir. 1989), cert. denied, **Jenkins v. Louisiana**, 493 U.S. 1059 (1990).

²Fed.R.Civ.P. 52(a); **Vaughner v. Pulito**, 804 F.2d 873 (5th Cir. 1986).

³**Turpen v. Missouri-Kansas-Texas R.R. Co.**, 736 F.2d 1022 (5th Cir. 1984). Once an employee establishes a *prima facie* case it is incumbent upon the employer to show that it was unable to reasonably accommodate the employee's religious needs without undue hardship.

weekends with another porter if one would have agreed to do so.⁴ In addition Daltex permitted Thurman to work flexible hours on Sundays so that he could attend church and the various church activities throughout the day. No more was required of Daltex.

The judgment of the district court is AFFIRMED.

⁴Thurman argues that Daltex should have required the other porters to work his weekend shifts. Title VII does not require employers to deny a shift preference "in order to accommodate or prefer the religious needs of others." **Trans World Airlines, Inc. v. Hardison**, 432 U.S. 63, 81 (1977). See also **Eversley v. MBank Dallas**, 843 F.2d 172, 176 (5th Cir. 1988) (concluding that it is an unreasonable and undue hardship on an employer to force employees, over their express refusal, to switch shifts in order to accommodate another employee's different Sabbath observation).