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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BURLINGTON NORTHERN & SANTA FE RAILWAY
CO. *v.* WHITECERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 05–259. Argued April 17, 2006—Decided June 22, 2006

Title VII of the Civil Rights Act of 1964 forbids employment discrimination based on “race, color, religion, sex, or national origin,” 42 U. S. C. §2000e–2(a), and its anti-retaliation provision forbids “discriminat[ion] against” an employee or job applicant who, *inter alia*, has “made a charge, testified, assisted, or participated in” a Title VII proceeding or investigation, §2000e–3(a). Respondent White, the only woman in her department, operated the forklift at the Tennessee Yard of petitioner Burlington Northern & Santa Fe Railway Co. (Burlington). After she complained, her immediate supervisor was disciplined for sexual harassment, but she was removed from forklift duty to standard track laborer tasks. She filed a complaint with the Equal Employment Opportunity Commission (EEOC), claiming that the reassignment was unlawful gender discrimination and retaliation for her complaint. Subsequently, she was suspended without pay for insubordination. Burlington later found that she had not been insubordinate, reinstated her, and awarded her backpay for the 37 days she was suspended. The suspension led to another EEOC retaliation charge. After exhausting her administrative remedies, White filed an action against Burlington in federal court claiming, as relevant here, that Burlington’s actions in changing her job responsibilities and suspending her for 37 days amounted to unlawful retaliation under Title VII. A jury awarded her compensatory damages. In affirming, the Sixth Circuit applied the same standard for retaliation that it applies to a substantive discrimination offense, holding that a retaliation plaintiff must show an “adverse employment action,” defined as a “materially adverse change in the terms and conditions” of employment. The Circuits have come to different conclusions about

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whether the challenged action has to be employment or workplace related and about how harmful that action must be to constitute retaliation.

Held:

1. The anti-retaliation provision does not confine the actions and harms it forbids to those that are related to employment or occur at the workplace. The language of the substantive and anti-retaliation provisions differ in important ways. The terms “hire,” “discharge,” “compensation, terms, conditions, or privileges of employment,” “employment opportunities,” and “status as an employee” explicitly limit the substantive provision’s scope to actions that affect employment or alter workplace conditions. The anti-retaliation provision has no such limiting words. This Court presumes that, where words differ as they do here, Congress has acted intentionally and purposely. There is strong reason to believe that Congress intended the differences here, for the two provisions differ not only in language but also in purpose. The anti-discrimination provision seeks a workplace where individuals are not discriminated against because of their status, while the anti-retaliation provision seeks to prevent an employer from interfering with an employee’s efforts to secure or advance enforcement of the Act’s basic guarantees. To secure the first objective, Congress needed only to prohibit employment-related discrimination. But this would not achieve the second objective because it would not deter the many forms that effective retaliation can take, therefore failing to fully achieve the anti-retaliation provision’s purpose of “[m]aintaining unfettered access to statutory remedial mechanisms,” *Robinson v. Shell Oil Co.*, 519 U. S. 337, 346. Thus, purpose reinforces what the language says, namely, that the anti-retaliation provision is not limited to actions affecting employment terms and conditions. Neither this Court’s precedent nor the EEOC’s interpretations support a contrary conclusion. Nor is it anomalous to read the statute to provide broader protection for retaliation victims than for victims of discrimination. Congress has provided similar protection from retaliation in comparable statutes. And differences in the purpose of the two Title VII provisions remove any perceived “anomaly,” for they justify this difference in interpretation. Pp. 6–12.

2. The anti-retaliation provision covers only those employer actions that would have been materially adverse to a reasonable employee or applicant. This Court agrees with the Seventh and District of Columbia Circuits that the proper formulation requires a retaliation plaintiff to show that the challenged action “well might have ‘dissuaded a reasonable worker from making or supporting a charge of discrimination.’” *Rochon v. Gonzales*, 438 F. 3d 1211, 1219. The Court refers to *material* adversity to separate significant from trivial

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harms. The anti-retaliation provision seeks to prevent employer interference with “unfettered access” to Title VII’s remedial mechanisms by prohibiting employer actions that are likely to deter discrimination victims from complaining to the EEOC, the courts, and employers. *Robinson, supra*, at 346. The Court refers to a *reasonable* employee’s reactions because the provision’s standard for judging harm must be objective, and thus judicially administrable. The standard is phrased in general terms because the significance of any given act of retaliation may depend upon the particular circumstances. Pp. 12–15.

3. Applying the standard to the facts of this case, there was a sufficient evidentiary basis to support the jury’s verdict on White’s retaliation claim. Contrary to Burlington’s claim, a reassignment of duties can constitute retaliatory discrimination where both the former and present duties fall within the same job description. Almost every job category involves some duties that are less desirable than others. That is presumably why the EEOC has consistently recognized retaliatory work assignments as forbidden retaliation. Here, the jury had considerable evidence that the track laborer duties were more arduous and dirtier than the forklift operator position, and that the latter position was considered a better job by male employees who resented White for occupying it. Based on this record, a jury could reasonably conclude that the reassignment would have been materially adverse to a reasonable employee. Burlington also argues that the 37-day suspension without pay lacked statutory significance because White was reinstated with backpay. The significance of the congressional judgment that victims of intentional discrimination can recover compensatory and punitive damages to make them whole would be undermined if employers could avoid liability in these circumstances. Any insufficient evidence claim is unconvincing. White received backpay, but many reasonable employees would find a month without pay a serious hardship. White described her physical and emotional hardship to the jury, noting that she obtained medical treatment for emotional distress. An indefinite suspension without pay could well act as a deterrent to the filing of a discrimination complaint, even if the suspended employee eventually receives backpay. Thus, the jury’s conclusion that the suspension was materially adverse was reasonable. Pp. 15–18.

364 F. 3d 789, affirmed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. ALITO, J., filed an opinion concurring in the judgment.