Legal Update Article

Ninth Circuit Holds Warehouse Worker Qualifies as Transportation Worker Under FAA Exemption

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April 16, 2024

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Arbitration agreements with warehouse workers and others who play a "direct and necessary role" in the transportation of goods and people may fall within the "transportation worker exemption" to the Federal Arbitration Act (FAA), the U.S. Court of Appeals for the Ninth Circuit held. *Ortiz v. Randstad Inhouse Services, LLC*, No. 23-55147 (Mar. 12, 2024).

Whether an arbitration agreement is exempt from the FAA is often important because absent the FAA, arbitration agreements are subject to enforcement under state law, and state law can be hostile to arbitration and even *preclude* enforcement of all or part of an arbitration agreement.

Facts

The plaintiff, Adan Ortiz, worked in a California warehouse receiving products from mostly international locations. Products remained in the warehouse for days or weeks before being shipped to end-use consumers and retailers in various states. Ortiz was not responsible for loading or unloading products from shipping containers that arrived at the warehouse — those tasks were handled by other employees. Rather, Ortiz's role was limited to selecting and moving products *within the warehouse itself.*

Ortiz signed an arbitration agreement when he was hired that was to apply to all claims relating to his employment. The arbitration agreement's choice-of-law clause expressed a preference for enforcement under the FAA, noting the agreement "shall be governed by the Federal Arbitration Act" and that it "may be enforced … otherwise pursuant to the FAA."

Despite the arbitration agreement, Ortiz filed a class action lawsuit in California state court alleging various Labor Code violations. The employer timely removed the case to federal court and filed a motion to compel arbitration. The federal district court declined to compel arbitration, and the employer appealed.

Ninth Circuit's Opinion

The Ninth Circuit affirmed the district court's refusal to compel arbitration on the grounds that Ortiz's arbitration agreement fell within the transportation worker exemption to the FAA and thus could not be enforced under the FAA.

Although the FAA applies broadly and requires enforcement of arbitration agreements according to their terms, under the transportation worker exemption, "contracts of employment with seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" are exempt from the FAA. 9 U.S.C. § 1.

To reach the conclusion that the transportation worker exemption applied, the Ninth Circuit applied the two-step framework outlined by the U.S. Supreme Court in *Saxon v. Southwest Airlines*. Under the framework, a court must:

1. Determine the specific nature of the worker's job duties; and
2. Analyze whether the worker's job duties have a sufficiently close relationship to transporting goods or people through interstate commerce.

To qualify for the exemption, the worker's job duties must "play a direct and necessary role" in, be "actively engaged" with, or be "intimately involved" with the transportation of goods or people in the flow of interstate commerce.

The Ninth Circuit concluded that Ortiz's job duties, which involved moving products within a warehouse, were sufficiently connected to the transportation of goods through interstate commerce to trigger the transportation worker exemption. It rejected the argument that the transportation worker exemption did not apply because Ortiz's work involved moving goods only a short distance across the warehouse floor and onto storage racks. The Ninth Circuit reasoned that Ortiz moved the goods for the direct purpose of facilitating their continued travel through an interstate supply chain, which was sufficient to trigger the transportation worker exemption, and therefore Ortiz's arbitration agreement could not be enforced under the FAA.

Takeaway

Historically, the transportation worker exemption has been construed narrowly and applied largely to workers who physically transport goods or people across state lines (*e.g.,* freight truck drivers and cargo pilots). Recently, however, the exact contours of the transportation worker exemption have been in flux. As the Ninth Circuit's decision illustrates, after the U.S. Supreme Court's decision in *Saxon,* the transportation worker exemption may expand to cover workers who are less obviously involved in the transportation of goods or people through interstate commerce, including workers who do not cross state lines or whose work is confined to a single site. Therefore, employers who have arbitration agreements and workers involved in moving goods or people through interstate commerce should follow developments in this area carefully.

Please contact a Jackson Lewis attorney with any questions.