Legal Update Article

Supreme Court: Interstate Transport Companies' Independent Contractor-Drivers are Exempt from FAA

By Samia M. Kirmani & Eric R. Magnus

January 16, 2019

Meet the Authors

Samia M. Kirmani
Principal
(617) 367-0025
Samia.Kirmani@jacksonlewis.com

Eric R. Magnus
Principal and Office Litigation Manager
404-525-8200
Eric.Magnus@jacksonlewis.com

Related Services

Class Actions and Complex Litigation
Transportation and Logistics

In ***New Prime, Inc. v. Oliveira***, the U.S. Supreme Court held that the Federal Arbitration Act's (FAA) Section 1 exemption applies to transportation workers, regardless of whether they are classified as independent contractors or employees. No. 17-340 (Jan. 15, 2019).

By its terms, the FAA does not apply to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. In a unanimous 8-0 decision (Justice Brett Kavanaugh did not participate), the Court held that:

1. Whether the FAA's Section 1 exemption applies to an arbitration agreement is a question for a court to decide first;
2. The FAA's Section 1 "contracts of employment" exemption covers independent contractors as well as employees.

Background

New Prime is a trucking company. Dominic Oliveira was a New Prime truck driver who operated as an independent contractor and entered into an "Independent Contractor Operating Agreement" with New Prime. The agreement contained an arbitration provision, which stated that disputes between the parties, including disputes about "arbitrability," would be resolved by arbitration. Subsequently, Oliveira filed a class action suit against New Prime in federal court for alleged violations of the Fair Labor Standards Act (FLSA) and Missouri minimum wage laws. Relying solely on the FAA, New Prime moved to compel arbitration. The district court denied the motion without prejudice to permit discovery on the issue of whether the FAA applied in this case. New Prime appealed, arguing that the district court was required to stay judicial proceedings while the parties proceed to arbitration.

On appeal, the U.S. Court of Appeals for the First Circuit held that before a court may compel arbitration pursuant to the FAA, it must determine whether the FAA applies. If the FAA does not apply, private contracting parties cannot, through the insertion of a delegation clause, confer authority upon a district court — *i.e.,* to compel arbitration under the FAA — that Congress chose to withhold. *Oliveira v. New Prime, Inc.,* 857 F.3d 7, 15 (1st Cir. 2017). After examining the text of the FAA's Section 1 exemption and determining the FAA does not include a definition for "contracts of employment," the First Circuit determined that when the FAA was enacted, "contracts of employment" meant agreements to perform work, including agreements with independent contractors. Because Oliveira's "Independent Contractor Operating Agreement" is indisputably a transportation worker's agreement to perform work, the First Circuit ruled that the agreement is exempt from the FAA and is unenforceable. New Prime appealed.

Supreme Court Decision

The Supreme Court affirmed the First Circuit ruling. Writing for the Court, Justice Neil Gorsuch stated that the sequencing of a statute is critical to understanding the meaning and scope of the statute. The Court first must determine whether the exemption in Section 1 of the FAA applies *before* it may consider exercising the power to compel arbitration set forth in the FAA's Sections 3 and 4. Essentially, the Court held that if the FAA does not apply at all pursuant to Section 1, the Court does not reach the issue of delegation of arbitrability.

Turning its attention to the Section 1 exemption, the Court held that the phrase "contracts of employment of … workers engaged in … interstate commerce" covers independent contractors as well as employees. In reaching this conclusion, the Court determined that the plain language of the statute — *i.e.,* the term "workers" — was broader than "employees." The Court then examined numerous historical sources, dictionaries, treatises, and cases and concluded that in 1925 (when the FAA was adopted), the ordinary meaning and usage of the terms "workers" and "contracts of employment" extended to a wide variety of employment relationships, including what we now call independent contractors. Thus, the Court held, the plain language, the ordinary meaning, and the intent of the drafters all indicate that the Section 1 exemption applies here and support the First Circuit's conclusion that courts lack the authority under the FAA to compel arbitration in this case.

***

While this ruling is limited to the interpretation of Section 1 and the exemption from the FAA, it serves as a reminder that even though recent Supreme Court decisions have favored enforcement of arbitration agreements, such agreements must be prepared thoughtfully.

Jackson Lewis attorneys are available to answer inquiries regarding the FAA and arbitration agreements.