



Federal Appeals Court Hands Gig Companies Best New Prime News Yet, Requiring Grubhub Workers To Arbitrate Dispute

Insights

8.10.20

A federal appeals court just handed Grubhub – and gig economy companies in general – a pivotal victory by narrowly interpreting an exception allowing certain transportation workers (including independent contractors) to escape arbitration agreements. The 7th Circuit Court of Appeals joined a Massachusetts federal court by ruling that gig workers cannot avoid arbitration provisions by claiming they are exempt transportation workers. But what makes this ruling the most significant yet is not just simply because it came from a federal appeals court instead of a lower district court, but because of the wide-sweeping rationale used to justify the decision. What do gig economy businesses need to know about this ruling?

Quick Background

Last year, the Supreme Court ruled in *New Prime v. Oliveira* that the Federal Arbitration Act's (FAA's) exemption that excludes those with "contracts of employment of workers engaged in interstate commerce" from arbitration includes workers with independent contractor agreements. We immediately raised a red flag and discussed whether gig delivery and ride-sharing drivers would be considered to be operating in interstate commerce, and if so, whether courts would soon block arbitration agreements from being enforced.

While a Massachusetts federal court ruled in gig businesses' favor shortly thereafter in a ruling for DoorDash, the 3rd Circuit Court of Appeals blocked Uber from enforcing its arbitration pact in New Jersey because of the FAA exemption. This conflict between federal courts has created some nervous moments for gig economy businesses across the country, eagerly awaiting the next judicial decision on the matter. On August 4, the 7th Circuit delivered.

Fact Pattern: Did Food Delivery Involve Interstate Activity?

The case began when two Grubhub drivers, Carmen Wallace and Broderick Bryant, brought a proposed class action claim against the company, alleging they were misclassified as contractors and should have been paid as employees. Grubhub immediately asked the court to dismiss the case and send the matter to arbitration pursuant to the Delivery Service Provider Agreements that contained a valid and enforceable arbitration provision.

The drivers cited the *New Prime* decision and argued that they were exempt from arbitration because of the same transportation-worker exemption in the FAA that won the day for the New Prime drivers. While they didn't say that they physically crossed state lines while delivering food,

they claimed that they were engaged in interstate commerce through their work by shuttling food that had, at one point, been delivered across state lines. A lower court ruled in the company's favor and ordered the case to arbitration, but the workers appealed the ruling to the 7th Circuit.

Decision: Look To What Workers Do, Not At The Goods They Deliver

In its August 4 decision, the court began by noting the operative unit that can duck arbitration agreements is actually a “class of workers.” This is critical, it said, because it means that determining whether the exemption applies requires asking not whether the individual worker actually engaged in interstate commerce, but whether the *class of workers to which the complaining worker belonged* engaged in interstate commerce. That means that someone whose occupation is not defined by engaging in interstate commerce does not qualify for the exemption just because they occasionally perform that kind of work.

So what does it mean for a class of workers to be “engaged in interstate commerce”? The court said that that question can be answered by looking to whether the interstate movement of goods is a central part of the class members’ job description. While the workers pointed out that they carried goods that have moved across state and even national lines, that wasn’t enough to convince the court. “A package of potato chips, for instance, may travel across several states before landing in a meal prepared by a local restaurant and delivered by a Grubhub driver,” it said. “Likewise, a piece of dessert chocolate may have traveled all the way from Switzerland.”

But the court affirmed that the question should focus more on what the worker *does* instead of where the goods have *been*. “The workers must be connected not simply to the goods, but to the act of moving those goods across state or national borders” in order to qualify for the arbitration exemption. “Put differently,” the court said, “a class of workers must themselves be engaged in the channels of foreign or interstate commerce.” To win an exemption from arbitration, the workers would have had to demonstrate that the interstate movement of goods is a central part of the job description of the class of workers to which they belong – and the Grubhub workers that brought this case could not do so.

What Does This Decision Mean?

This ruling is terrific news for gig economy businesses in Illinois, Indiana, and Wisconsin, all under the purview of the 7th Circuit Court of Appeals. They can feel comfortable that all workers whose jobs do not center on the interstate movement of goods will be subject to any valid arbitration agreements they have entered into.

For gig businesses elsewhere, this news is still pretty good. You now have authority from a federal appeals court supporting the validity of your arbitration agreements without having to engage in a detailed fact-specific analysis like the Massachusetts federal court required.

However, note that we now have a true split of the circuits, as the 3rd Circuit’s ruling (covering New Jersey, Pennsylvania, and Delaware) runs contrary to this court’s decision. Might we one day see the Supreme Court stepping in to take the next step in the *New Prime* battle and resolve the circuit

Supreme Court stepping in to take the next step in the *New York Times* battle and resolve the circuit split? The chances of that happening have now increased with this ruling. We'll continue to monitor the issue and report back with further developments.

Related People



Richard R. Meneghello
Chief Content Officer
503.205.8044
[Email](#)