



Round One of Critical New Prime Battle Goes To Gig Businesses

Insights

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Great news for gig economy businesses from an Illinois federal court: a judge recently ruled that Grubhub's delivery drivers were not operating in "interstate commerce," and therefore were not excluded from the company's mandatory arbitration agreement. The March 28 ruling is one of the first decisions on this subject following January's Supreme Court ruling casting this issue into doubt. While the fight is not over, round one goes to gig economy companies.

Quick Background

Earlier this year, the Supreme Court rejected a trucking company's effort to force its drivers to arbitrate their wage and hour claims despite the fact they had signed otherwise enforceable arbitration agreements (*New Prime Inc. v. Oliveira*). The SCOTUS held that the Federal Arbitration Act's (FAA's) exemption that excludes "contracts of employment of workers engaged in interstate commerce" includes not only interstate transportation workers with employment agreements, but also those interstate transportation workers with independent contractor agreements.

Regular readers of this blog will remember that we immediately raised a red flag and discussed the dangers of the *New Prime* decision when it comes to the gig economy. Because the Supreme Court expressly confirmed that independent contractors have "contracts of employment" as defined by the FAA, we wondered whether delivery drivers 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.

Illinois Court: Not So Fast

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.

The court rejected this argument. It pointed out that the day-to-day duties of the Grubhub drivers did not involve the handling of goods that remain in the stream of interstate commerce, or traveling to

and from other states. It also pointed out that the FAA provides specified categories of workers who fall under the transportation-worker exemption and they include jobs that are not similar at all to delivery drivers (“seamen” and “railroad employees”). For these reasons, the court held the arbitration agreement was valid and enforceable and that the FAA exemption did not apply.

Fight Will Continue

It’s better to win the first round than to lose it, no doubt, but the battle will continue. No doubt an eager plaintiffs’ attorney will find a delivery driver or ride-sharing driver who regularly transports food or passengers across state lines and test the theory further. Once that decision comes down, we will be here to update our readers.

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