Gig Companies Lose Round 2 in New Prime Battle As Courts Debate Whether Workers Are Exempt From Arbitration

Insights
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A federal appeals court decided last week that ride-share drivers engaging in interstate commerce while performing work for Uber should not be subject to the company's arbitration agreement because of a recent Supreme Court ruling broadly interpreting a federal law exemption that applies to independent contractors. This September 11 ruling threatens to upend a pivotal tool that many businesses use to better manage workplace litigation and requires all gig businesses operating near state borders to take notice.

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.

Companies Win Round 1
Things pointed in right direction in April when the first court to rule on the matter upheld Grubhub's arbitration agreement and rejected arguments from a pair of Illinois delivery drivers, who asserted that they should be subject to the FAA exemption. A federal district court in Illinois 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. Also, the drivers did not actually allege they crossed state lines when working for the gig company. For these reasons, the court held the arbitration agreement was valid and enforceable and that the FAA exemption did not apply.

Workers Win Round 2

But things broke in a different direction when it came to examining a similar arbitration agreement involving a New Jersey ride-share driver who may have, in fact, crossed state lines as part of his job. Jaswinder Singh brought a wage and hour class action against Uber on behalf of New Jersey drivers, raising the very common misclassification argument. When Uber asked the court to dismiss the case and instead send the case to arbitration, Singh pointed to the *New Prime* case and the FAA and asked the court to ignore the arbitration agreement. On September 11, the 3rd Circuit Court of Appeals ruled against Uber and noted that the arbitration agreement may, in fact, be scrapped because of the interstate worker exemption.

Although Uber argued that the FAA exemption should only apply to workers who transport goods, not those who transport passengers, the court of appeals disagreed. It concluded that the FAA's arbitration exemption extends to those transportation workers carrying passengers provided they are engaged in interstate commerce or "in work closely related to interstate commerce as to be in practical effect part of it." In this specific case, the record wasn't exactly clear about whether Singh and his class of workers were so engaged in interstate commerce (because the lower court's evidentiary record hadn't yet been established, and because the intervening *New Prime* decision from the SCOTUS changed the rules of the game midstream). As a result, the 3rd Circuit sent the case back to the lower court in New Jersey to figure that out and enforce the new standard it had created.

What's Next?

According to Law.com, this is the first time a court has applied the FAA arbitration exemption to a gig economy case in light of the *New Prime* decision, and no doubt other attorneys will seek to capitalize on the ruling. This decision will be cited in other lawsuits as plaintiffs' attorneys seek to invalidate otherwise valid arbitration agreements in the gig economy. If your business may be impacted, you should consult with your workplace law counsel as soon as possible to determine whether you can take steps to adjust and preserve your arbitration program.