



Supreme Court Rules Class Arbitration Not Allowed When Agreement is Silent

Insights

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On April 27, 2010 the U.S. Supreme Court decided that class arbitration is permissible only when the parties to a contract specifically agree. That is, silence does not amount to an implicit agreement to class arbitration. This question had confounded courts and arbitrators for years. *AnimalFeeds v. Stolt-Nielsen*.

This ruling is a victory for those employers with arbitration agreements that are silent on the class claims issue. But, employers should not celebrate just yet, as it is possible that Congress will overturn this decision just as it recently did following another employer-friendly decision.

How The Case Arose

AnimalFeeds International Corp. entered into international maritime agreements with several different transportation companies collectively referred to as "Stolt-Nielsen." After a Department of Justice criminal investigation revealed a possible illegal price-fixing conspiracy, AnimalFeeds filed a class action lawsuit against Stolt-Nielsen alleging violations of the antitrust laws. In response, Stolt-Nielsen successfully compelled arbitration.

In a previous ruling (*Green Tree Financial Corp. v. Bazzle*), the Supreme Court came close to deciding the issue presented in this case. But, the Court concluded that it did not have jurisdiction to hear the matter because the arbitrator had not decided that the agreement was in fact "silent." In light of *Bazzle*, the parties in the *AnimalFeeds* case voluntarily agreed that an arbitration panel should decide whether, under the rules of the American Arbitration Association, the arbitration clause in their agreements permitted class arbitration. That panel found that the agreements were silent regarding class arbitration, and, therefore, class arbitration was possible.

Stolt-Nielsen, unhappy with this decision, asked a federal court in New York to overturn the panel's decision. That court agreed with Stolt-Nielsen and reversed the arbitration panel, declaring that the panel's decision was "in manifest disregard of the law." AnimalFeeds appealed that decision to the U.S. Court of Appeals for the 2nd Circuit, which flipped the case once again and reversed the decision of the lower court, agreeing with the arbitration panel. Stolt-Nielsen then appealed to the Supreme Court.

The Sound Of Silence

In a 5-3 decision (with Justice Sotomayor taking no part in the case), the Supreme Court held that

allowing class arbitration when the parties did not agree to it violates the Federal Arbitration Act (FAA). It reasoned that an arbitrator's task is "to interpret and enforce a contract, not make public policy." Because the arbitration clause was silent as to class proceedings, the Court found that the arbitrator panel had imposed "its own view of sound policy regarding class arbitration."

The Court noted that it did not reach a decision in *Bazze* regarding whether an arbitrator or a court should decide whether a contract permits class arbitration. It avoided that issue in this case, too, because the parties had agreed to submit the question to an arbitrator. Rather than remanding the question back to the arbitrator panel, the Supreme Court chose to decide the issue itself because it found that only one conclusion was possible. Accordingly, the Court found that class arbitration was not appropriate here because the parties had not agreed to such a procedure.

The FAA was enacted to ensure that private agreements to arbitrate are enforced according to their terms. Arbitration is "a matter of consent, not coercion" and imposing arbitration in the absence of agreement would be contrary to the FAA. But the Court did not specify what level of proof is necessary to show that the parties intended to engage in class arbitration, preferring to simply say that "some contractual basis" must exist.

Allowing class arbitration in the absence of an agreement, the Court observed, would fundamentally alter the parties' expectations. The Court said, "class-action arbitration changes the nature of arbitration to such a degree that it cannot be presumed the parties consented to it by simply agreeing to submit their dispute to an arbitrator." The Court concluded that class arbitration erodes the parties' privacy and confidentiality expectations, while also risking the possibility of subjecting the defendant to an adverse ruling regarding multiple disputes.

Justices Ginsburg, Stevens and Breyer filed a dissenting opinion, arguing that the arbitration panel, consistent with the FAA and the parties' agreement, came to the correct conclusion. They argued that the parties agreed to allow an arbitration panel to interpret their contract, and that is exactly what the panel did. At the very least, the dissenters believed, the arbitration panel should have decided the issue rather than the Court.

Larger Implications For Employers

Although this particular case deals with an antitrust claim based on a maritime shipping agreement, employers may rely on it to prohibit class-action arbitration claims raised by their current or former employees where the underlying arbitration agreement is silent on the matter. Employers should be aware, however, that Congress may reverse this decision just as it did following the Supreme Court's *Ledbetter v. Goodyear Tire & Rubber Co.* decision on the Equal Pay Act.

Congress, in fact, is already contemplating dramatic changes regarding arbitration agreements. Reintroduced in early 2009, the Arbitration Fairness Act of 2009 bill would amend the FAA to eliminate all pre-dispute arbitration agreements in the areas of employment, civil rights and consumer disputes. Arbitration agreements between employers and labor unions contained in collective bargaining agreements would not be affected. If passed, the Arbitration Fairness Act

collective bargaining agreements would not be affected. If passed, the Arbitration Fairness Act would shift many disputes currently resolved by private arbitration back into the civil courts and render the Court's decision in this case a nullity for employers. This bill remains in committee as of this writing.

Moreover, the Supreme Court recently decided that a panel of arbitrators violated the Railway Labor Act when they declined to exercise jurisdiction over five grievances. The Court will also decide another arbitration case, *Granite Rock Co. v. International Brotherhood of Teamsters*, which will determine whether an arbitrator or a court decides disputes about whether the parties agreed to arbitrate in the first place. Stay tuned for future Legal Alerts on these cases as they are decided.

This Legal Alert is provided as an overview and explanation of a particular Supreme Court case. It is not intended to be, and should not be considered, legal advice regarding any particular fact situation.