



# End of the Road: SCOTUS Ruling Means Many Transportation Workers Are Now Exempt From Arbitration

Insights

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In a unanimous 8-0 decision, the Supreme Court ruled today that federal courts can't force interstate transportation workers—including contractors—into arbitration, ruling that the Federal Arbitration Act's Section 1 exemption for these workers is a threshold question for the court to resolve, not the arbitrator. Perhaps more importantly, the Court also applied the Section 1 "contract of employment" exemption from the FAA to include not only interstate transportation workers with employment agreements, but also to those interstate transportation workers with independent contractor agreements (*New Prime Inc. v. Oliveira*).

Nearly 1 million men and women work as truck drivers nationwide. This ruling could open the floodgates to a host of new class and collective action lawsuits against interstate transportation employers in federal and state courts; employers in this industry should immediately coordinate with their labor and employment counsel to determine how this development might affect them.

## Background

The Federal Arbitration Act (FAA), which went into effect back in 1925, has been a hot area of litigation for the Supreme Court in recent terms, with at least three FAA cases on the docket for this term (and one already being decided last week). Several cases recently decided by the Court interpret the FAA very broadly and have enforced arbitration agreements, including in the employment context (with the *Epic Systems Corp. v. Lewis* case from last term being the high-water mark).

However, Section 1 of the FAA excludes "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," which the Court has ruled to include "contracts of employment of transportation workers." 9 U.S.C. § 1; *Circuit City Stores v. Adams*. The majority of lower courts to have examined the matter had interpreted the Section 1 exemption to apply only to employees and not to independent contractors.

Dominic Oliveira, a truck driver who was at various times an apprentice, independent contractor, and employee for the interstate trucking company New Prime, brought a class action suit against New Prime alleging that the company failed to pay him and other drivers minimum wage for all hours worked. Oliveira brought the suit in federal court despite a provision in his independent contractor agreement with New Prime in which the parties agreed to arbitrate their disputes.

The first issue that Oliveira’s case presented to the 1st Circuit is who should decide the applicability of the Section 1 exemption when the independent contractor agreement provided that any threshold questions regarding the arbitrability of Oliveira’s claims should be decided by an arbitrator. New Prime argued that the Section 1 exemption must be resolved by an arbitrator when the parties agreed to arbitrate the threshold arbitrability issues, while Oliveira argued that the question of arbitrability should be decided by a court, not an arbitrator.

In affirming the lower court, the 1st Circuit reasoned that the contracting parties may not invoke the authority of the FAA to decide the question of whether the parties can invoke the authority of the statute. The 1st Circuit reasoned that this position “puts the cart before the horse.” It explained that a district court must make an “antecedent determination” on the question of whether the Section 1 exemption applies to a contract before ordering arbitration. This ruling split with a contradictory ruling from the 8th Circuit, creating a classic circuit split and confusion among businesses with multistate operations.

Second, Oliveira argued that the FAA’s exemption for “contracts of employment” for interstate transportation workers refers to all contracts to do work with employees, including those signed by independent contractors. In a departure from the majority of district courts that have looked at the issue, the 1st Circuit sided with Oliveira. The court dismissed other courts’ decisions that concluded the Section 1 exemption does not apply to an independent contractor relationship.

The 1st Circuit reasoned that other district courts failed to examine the statutory text, and instead conducted its own review of historical evidence, giving the term “contracts of employment” its ordinary meaning from the time of the FAA’s passage in 1925. The 1st Circuit found that the ordinary meaning of the phrase “contracts of employment,” taken together with the undisputed fact that Oliveira is a transportation worker, warranted the conclusion that the contract was “excluded from the FAA’s reach.”

### **Supreme Court: Exemption Applies To All Employment Relationships, Including Contractors**

The Supreme Court stepped up today and decided unanimously in workers’ favor. On the first issue, the Court ruled that a judge, rather than an arbitrator, should decide the applicability of the Section 1 exemption. In doing so, Justice Neil Gorsuch (writing for the majority) rejected the employer’s delegation clause argument, and instead cited the fact that Sections 3 and 4 of the FAA—which in part require a court to stay litigation and compel arbitration—are limited by the exceptions defined in Section 1 of the FAA.

Thus, Justice Gorsuch reasoned that a court should decide whether the Section 1 exclusion applies before ordering arbitration. Justice Gorsuch explained that, in order to invoke its statutory powers under Sections 3 and 4 to stay litigation and compel arbitration, a court must first know whether the contract itself falls within or beyond the boundaries of Sections 1 and 2.

On the second, and possibly more critical issue, the Court ruled that the term “contracts of employment” pertains to contracts with employees as well as independent contractors. Upon

employment pertains to contracts with employees as well as independent contractors. Upon reaching this conclusion, Justice Gorsuch explained that then the FAA was enacted in 1925, a “contract of employment” meant nothing more than an agreement to perform work. So, at the time, the common understanding of the Section 1 exemption meant that Section 1 applied to both agreements between employers and employees as well as agreements for independent contractors to perform work.

Justice Gorsuch buttressed this conclusion by looking at dictionaries from the relevant time period and equating the word “employment” as a synonym for “work;” all work was treated as employment. Further, the Court looked at legal authorities from the time period and saw no evidence that a “contract of employment” strictly meant that an employer-employee relationship was formed.

### **What This Means: A Potential End To Employment Arbitration For Truck Drivers?**

Since the Supreme Court held that “contracts of employment” in Section 1 of the FAA include independent contractor agreements, transportation employers now find that the arbitration agreements and class action waivers they signed with their independent contractors could be considered invalid. Further, some state courts applying state law have refused to uphold certain arbitration provisions, such as class action waivers, on unconscionability grounds. Many of these provisions could now be considered invalid under state law, which means that a wave of class and collective actions is threatening to overwhelm transportation employers. For example, in an amicus brief filed by American Trucking Associations, Inc., the industry group states that over 545,000 trucks in the United States are operated by independent contractors, many of whom have contracts that would be invalidated by the outcome of this case.

Finally, since arbitration permits disputes to be resolved with less litigation expense in many instances, the Court’s ruling will likely raise legal costs for transportation companies. These companies may now, in turn, pass on the higher costs to consumers who depend on interstate trucking for the delivery of commercial goods.

If you need assistance reviewing your arbitration agreements to ensure they meet the new standards set by the Supreme Court, or crafting new agreements to account for the ruling, please contact your Fisher Phillips attorney.

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