Supreme Court Clarifies FAA Arbitration Exception Not Limited to Transportation Workers

April 15, 2024

On April 12, 2024, the Supreme Court issued its decision in *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. __ (2024). It unanimously held that the exception to arbitration under Section 1 of the Federal Arbitration Act (FAA) is **not** limited solely to employees of a company in the transportation industry, but, rather, focuses on whether the employee is involved in interstate commerce.

Under the FAA, arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[1] The FAA, however, contains an exception to this. Specifically, 9 U.S.C. § 1 states, in relevant part, that the FAA shall not "apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Courts, including the Supreme Court, have struggled with what this exception means.

As Chief Justice Roberts noted in *Bissonnette*, "[m]ore than twenty years ago, in *Circuit City Stores, Inc. v. Adams*, 532 U. S. 105 (2001), we recognized that §1 is limited to transportation workers." In *Adams*, the Court explained that the general phrase "class of workers engaged in . . . commerce" is "controlled and defined by reference to" the specific categories "seamen" and "railroad employees" that precede it. The link between seamen and railroad employees, as the Court saw it, was that both were considered transportation workers. "The class of workers in the residual clause was therefore limited in the same way."[2]

Nearly twenty years later, the Supreme Court revisited this exception in *Southwest Airlines Co. v. Saxon,* 596 U.S. 450 (2022) and refused to adopt an "industry-wide" approach to the exception to arbitration for a class of workers involved in transportation under 9 U.S.C. § 1.[3] Rather, according to the Court in *Saxon*, a "class of workers is properly defined based on what a worker does for an employer, not what [the employer] does generally."[4] Notwithstanding *Saxon*, the Second Circuit, in affirming the district court's decision to compel arbitration, focused on what it believed constituted a "transportation industry" subject to the exception to arbitration, instead of focusing on what the employees actually do. But the Court unanimously rejected this test, noting:

> *The application of such a test, however, would often turn on arcane riddles about the nature of a company's services. Does a pizza delivery company derive its revenue mainly from pizza or delivery? Do companies like Amazon and Walmart—which both sell products of their own and transport products sold by third parties—derive their revenue mainly from retail or shipping? Extensive discovery might be necessary to explore the*

> *internal structure and revenue models of a company before deciding a simple motion to compel arbitration. Mini-trials on the transportation-industry issue could become a regular, slow, and expensive practice in FAA cases. All this "complexity and uncertainty" would "'breed[] litigation from a statute that seeks to avoid it.'"*

The Court further rejected the respondent's concern that such an approach would create an exception to arbitration under 9 U.S.C. § 1 that would subsume the rule as "virtually all products move in interstate commerce." The Court reiterated that its precedence was not nearly so broad and that a transportation worker is one who is "actively" "engaged in the transportation of goods across borders via the channels of foreign or interstate commerce."[5] As the Court saw it, this requirement "undermines any attempt to give the provision a sweeping, open-ended construction," instead limiting §1 to its appropriately "narrow" scope.

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[1] 9 U.S.C. § 2.

[2] *Id*. at 118-119, 121.

[3] *Id*. at 460.

[4] *Id*. at 456.

[5] *Saxon*, 596 U.S. at 458.

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