

Arbitration Agreement for Company's Transport Workers Enforceable under New Jersey Law, Court Rules

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Even though the Federal Arbitration Act (FAA) exempts transportation workers engaged in interstate commerce from arbitration agreements, the New Jersey Arbitration Act (NJAA) may provide adequate legal basis to enforce such agreements, a three-judge panel of the New Jersey appeals court has ruled. *Colon v. Strategic Delivery Solutions, LLC*, No. A-2378-17T4 (N.J. Super. Ct. App. Div. June 4, 2019).

The case was remanded to the trial court with directions to first determine whether the plaintiffs, independent contractor-drivers, were covered by the FAA's exemption for "transportation workers," as required under the U.S. Supreme Court's *New Prime, Inc. v. Oliveira*, No. 17-340 (Jan. 15, 2019). Writing for the Court, Judge Karen Suter said, however, that even if the trial court finds them to be transportation workers exempt from the FAA, the plaintiffs still may arbitration their claims under the state arbitration law.

A day after *Colon* was released, a different three-judge panel of New Jersey's Appellate Division said, in an unsigned per curiam decision, *Arafa v. Health Express Corp.*, No. A-1862-17T3 (June 5, 2019), it relied on *New Prime* to conclude that a driver may pursue his wage and hour claims in court. The *Arafa* opinion did not discuss the NJAA or whether the state arbitration statute applied. The panel ruled the driver qualifies as a transportation worker exempt from arbitration under the FAA and remanded the case to the trial court.

Supreme Court on FAA

The FAA states that its provisions "shall not apply to *contracts of employment* of [...] any other class of workers engaged in foreign or interstate commerce." (Emphasis added.) In *New Prime*, the Supreme Court held that the FAA's transportation worker exception applies not only to "contracts of employment," but to independent contractor agreements between companies and transportation workers. Therefore, the Supreme Court ruled that the FAA does not provide a statutory basis for enforcing an arbitration agreement between a company and a transportation worker engaged in interstate commerce. That decision left in doubt the enforceability of arbitration agreements in the industry, which relies on independent contractor-drivers. (For details of *New Prime*, see our article, [Supreme Court: Interstate Transport Companies' Independent Contractor-Drivers are Exempt from FAA.](#))

Colon Background

The plaintiffs in *Colon* were transportation workers who executed independent contractor agreements that contained arbitration clauses that expressly referenced and relied upon the FAA. The agreements did not mention the NJAA.

The plaintiffs filed a complaint on behalf of themselves and similarly situated workers for alleged violations of the New Jersey Wage and Hour Law and New Jersey Wage Payment Law. They claimed that, in light of the exception to arbitration for transportation workers in the FAA, as explained in *New Prime*, the company could not enforce arbitration agreements that contained jury trial and class action waivers.

The trial court granted summary judgment to the company, dismissed the class action complaint and jury demand, and ordered mandatory binding arbitration on an individual basis. The plaintiffs appealed.



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NJAA and *Colon*

A three-judge panel of New Jersey's Appellate Division held that the NJAA provided a sufficient statutory basis to enforce an arbitration agreement between a company and independent contractors engaged in interstate commerce.

Judge Suter explained that the NJAA, like the FAA, favors arbitration as a means of resolving disputes. The Judge pointed out that while the FAA contains an exception for transportation workers, the NJAA does not. Moreover, she noted that, since the FAA does not contain a preemption clause, the NJAA may apply to an arbitration agreement "even if the FAA did not apply."

Judge Suter also explained that an agreement need not expressly reference the NJAA because the statute specifically applies to all arbitration agreements in New Jersey, with the exception of arbitration agreements as part of a collective bargaining agreement, "made on or after January 1, 2003."

Employers should discuss with counsel whether state laws such as the NJAA may provide adequate legal basis to enforce arbitration agreements.

Please contact a Jackson Lewis attorney with any questions about employment arbitration agreements.

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