Legal Update Article

FAA's Transportation Worker Exception Covers Airline Ramp Agents, U.S. Supreme Court Holds

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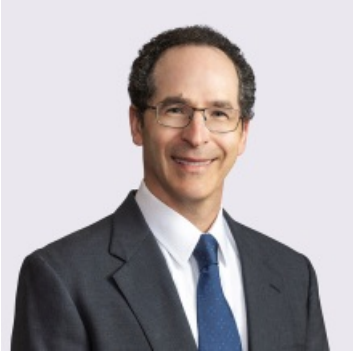

Individuals employed as ramp workers who frequently handle cargo for an airline are "transportation workers" exempt from the Federal Arbitration Act (FAA), the U.S. Supreme Court has held. ***Southwest Airlines Co. v. Saxon***, No. 21-309 (June 6, 2022). Therefore, the employees are not required to arbitrate their wage-hour claims under the FAA, but may still be subject to arbitration under state law.

The FAA's transportation worker exception excludes from FAA coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. In recent years, the scope of the exception — particularly its "any other class of workers" catchall provision — has emerged as a significant issue in class action litigation. In this case, the narrow question the Supreme Court addressed to resolve a circuit split was "[w]hether workers who load or unload goods from vehicles that travel in interstate commerce, but do not physically transport such goods themselves, are interstate 'transportation workers' exempt from the Federal Arbitration Act."

In the decision below, the U.S. Court of Appeals for the Seventh Circuit held that, even though the employee did not personally transport goods or people in interstate commerce, she was an essential link in the interstate commerce chain and, therefore, exempt from the FAA. The U.S. Court of Appeals for the Fifth Circuit reached the opposite conclusion in ***Eastus v. ISS Facility Servs., Inc.***, a 2020 case involving similar facts.

The Suit

Latrice Saxon, a Southwest Airlines cargo ramp supervisor at Chicago's Midway airport, brought a putative collective action wage suit against her employer. Despite her supervisory role, she alleged that she *frequently* performed the work of physically loading and unloading cargo on and off airplanes (which Southwest disputed). She filed a putative collective action under the Fair Labor Standards Act alleging she and her fellow ramp supervisors were entitled to overtime pay. When the airline sought to compel arbitration of her claims under the parties' arbitration agreement, Saxon contended she cannot be forced to arbitrate because she is a "transportation worker" exempt from FAA coverage and, therefore, the arbitration agreement was not enforceable.

The district court found the transportation worker exception did not apply and compelled arbitration. The Seventh Circuit reversed, finding the transportation worker exception applied.

The Court's Reasoning

The Supreme Court, in a unanimous 8-0 opinion authored by Justice Clarence Thomas, affirmed the judgment of the court of appeals. (Justice Amy Coney Barrett was recused

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from this case and did not participate.)

First, the Court held that, in deciding whether a "class of workers" is engaged in interstate commerce for purposes of the transportation worker exception, the analysis turns on the duties of the workers in question and not the company or industry in which the workers are engaged. The justices rejected an industrywide or companywide approach urged by the plaintiffs, which would broadly exempt "virtually all employees of major transportation providers." Instead, the Court said the key inquiry is the "actual work that the members of the class, as a whole, typically carry out."

Second, the Court examined what it means to be "engaged in foreign or interstate commerce." It held that the workers must be "directly involved in transporting goods across state or international borders falls within §1's exception." The Court determined that airplane cargo loaders are engaged in foreign or interstate commerce because "one who loads cargo on a plane bound for interstate transit is intimately involved with the commerce (*e.g.*, transportation) of that cargo." The Court rejected the airline's argument that the exception applied only to employees who physically move goods across states while on board a plane or other vehicle.

Takeaway

The Supreme Court's decision makes clear that, when determining whether workers qualify for the FAA's transportation worker exception, what the *employer* (or contracting entity) does has no bearing on the analysis. Rather, the analysis turns on the specific duties those workers perform and whether those duties directly involve interstate commerce.

In this case, the ramp supervisor who claimed to frequently load and unload cargo qualified for the exception. The Court, however, said airline employees whose duties are more removed from the interstate flow of transit (such as an airline's shift schedulers and website designers) likely would not qualify for the exception. In a footnote, the Court likewise suggested that last-mile delivery drivers and food delivery drivers are "further removed" from the channels of interstate commerce and the answer would not be as clear in such case.

Similarly, the Court clarified that its opinion did not apply to employees who only perform supervision of transportation workers and are not themselves directly involved in transportation of the goods; it reserved that question for another day. Therefore, the contours of the transportation worker exception will continue to be litigated.

Yet, the opinion suggests that many workers in the transportation industry, and workers in other industries that generally engage in interstate commerce, likely will be unable to invoke the exception to evade arbitration under the FAA if their role is merely tangential to the interstate flow of goods.

Notwithstanding the Court's decision, while the transportation worker exception may mean an arbitration agreement is not enforceable under the FAA, an arbitration agreement with transportation workers nonetheless may be enforceable under an applicable state law.

Contact a Jackson Lewis attorney if you have questions about the scope of the FAA transportation worker exception or the enforceability of arbitration agreements.

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