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Legal Sidebar

Supreme Court to Consider Scope of Federal Arbitration Act's Exemption for Transportation Workers

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The Supreme Court recently granted certiorari in *Bissonnette v. LePage Bakeries Park St., LLC*, a case involving the Federal Arbitration Act's exemption for interstate transportation workers. Although the Federal Arbitration Act (FAA) generally requires federal and state courts to enforce written arbitration agreements according to their terms, the Act excludes from its coverage the "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The Supreme Court has previously held that this exemption covers only "transportation workers" who are actively engaged in interstate or foreign transportation. In *Bissonnette*, the Court is to consider a related issue that has divided lower courts of appeals—whether the exemption applies only to individuals working in a transportation industry, such as airline employees, or whether individuals performing transportation work in other industries may qualify for the exemption.

Many manufacturers, retailers, and other companies whose primary business is not transportation use their own private fleets to ship goods. By some estimates, for instance, around two million truck drivers in the United States work in private truck fleets instead of for traditional trucking companies. The Court's decision in *Bissonnette* could determine whether arbitration agreements in these workers' employment contracts are enforceable under the FAA. *Bissonnette* thus implicates ongoing policy debates over the proliferation of arbitration agreements in employment contexts. Some commentators argue that arbitration can provide a faster resolution and a more cost-effective and accessible forum for employees than traditional court litigation. Others argue that such agreements may unfairly shield employers from liability, such as by precluding class litigation of claims that might be too small to justify the expense of an individual lawsuit.

This Legal Sidebar provides background on the FAA and the Supreme Court's interpretation of the transportation worker exemption, examines *Bissonnette*, and discusses considerations for Congress.

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Background

The FAA generally requires federal and state courts to treat arbitration agreements as "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," and to "rigorously" enforce arbitration agreements according to their terms. The Supreme Court has explained that Congress enacted the FAA "to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate ... and to place such agreements upon the same footing as other contracts." The Court has characterized the FAA as establishing a "national policy favoring arbitration."

Section 2 of the FAA applies the statute to written arbitration agreements in contracts "involving commerce," which the Supreme Court has interpreted broadly as covering contracts that fall within the full reach of Congress's Commerce Clause power. Section 1, however, exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

Bissonnette is the latest in a series of cases in which the Supreme Court has considered the scope of Section 1's exemption. In *Circuit City Stores, Inc. v. Adams*, the Court held that the exemption applies only to the contracts of "transportation workers." Although the exemption's residual phrase—"any other class of workers engaged in foreign or interstate commerce"—could cover all employment contracts if construed broadly, the Court reasoned that the FAA's text and purpose require construing the exemption more narrowly. The Court interpreted the exemption's residual phrase as limited to the contracts of workers who are similar to "seamen" and "railroad employees."

In *New Prime Inc. v. Oliveira*, the Court next held that the exemption's reference to "contracts of employment" applies both to employer-employee agreements and to agreements with independent contractors. While acknowledging that the phrase "contracts of employment" might suggest to modern readers only contracts between employers and employees, the Court determined that the phrase had a more general meaning in 1925 when Congress enacted the FAA.

Most recently, in *Southwest Airlines Co. v. Saxon*, the Supreme Court clarified the scope of Section 1's exemption in ruling that an airport ramp supervisor for Southwest Airlines was an exempt transportation worker. The Court reached its conclusion by first defining the "class of workers" to which the ramp supervisor belonged, and then determining whether the relevant class is "engaged in foreign or interstate commerce." The Court rejected the argument that "airline employees" constituted the relevant class, and it instead determined that the ramp supervisor belonged to "a class of workers who physically load and unload cargo on and off airplanes on a frequent basis." Observing that the exemption's use of the words "workers" and "engaged in" emphasizes the performance of work, the Court reasoned that defining the relevant class requires focusing on the "actual work" that members of the class as a whole typically perform. The ramp supervisor was thus "a member of a 'class of workers' based on what she does at Southwest, not what Southwest does generally."

The *Saxon* Court then concluded that airplane cargo loaders as a class are "engaged in foreign or interstate commerce" under Section 1. The Court explained that "any class of workers directly involved in transporting goods across state or international borders" falls within the exemption. In the Court's view, although airline employees who physically load and unload planes traveling across state lines might not themselves travel interstate, they are, "as a practical matter, part of the interstate transportation of goods."

Bissonnette

In *Bissonnette*, plaintiffs who delivered baked goods by truck for a national bakery sued the bakery and related companies for alleged violations of federal and state wage laws. The plaintiffs marketed, sold, and delivered the baked goods to restaurants and stores under a distributorship agreement with the bakery, which the plaintiffs claimed improperly classified them as independent contractors instead of employees. The distributorship agreement contained an arbitration provision, however. After concluding that the

plaintiffs were not transportation workers exempt from the FAA, the district court granted the bakery's motion to compel arbitration and dismissed the case. On appeal, a divided Second Circuit panel affirmed the district court's decision, and then affirmed that decision again upon rehearing after reconsidering the issue in light of the Supreme Court's intervening *Saxon* opinion.

A majority of the Second Circuit panel ultimately held that the plaintiffs were not exempt transportation workers under the FAA because, although they drove trucks, the plaintiffs worked "in the bakery industry, not a transportation industry." In concluding that only workers in a transportation industry can qualify as exempt transportation workers, the majority explained that the FAA's reference to "seamen" and "railroad employees" places transportation workers "in the context of a *transportation industry*" and thus provides a "reliable principle" for interpreting the exemption. The majority further defined a "transportation industry" as one that "pegs its charges chiefly to the movement of goods or passengers, and [whose] predominant source of commercial revenue is generated by that movement." Thus, although the plaintiffs spent much of their work days transporting goods by truck, the "decisive fact" in the case, according to the majority, was that the customers were buying baked goods and not "the movement of the baked goods," which was "at most a component of total price."

The majority also addressed why it did not view the Supreme Court's *Saxon* decision as undermining a transportation-industry requirement. Although *Saxon* emphasized that working in a transportation industry is not *sufficient* to qualify as a transportation worker, the majority explained that the *Saxon* Court did not address whether working in such an industry is nonetheless *necessary*, because there the plaintiff worked for an airline and the issue was not in dispute.

In contrast, the dissenting panel judge asserted that the majority's transportation-industry requirement "ignores" *Saxon* and conflicts with the Supreme Court's reasoning by "focusing on the nature of the defendants' business, and not on the nature of the plaintiffs' work." *Saxon* proscribed that approach, in the dissent's view, because the Court emphasized that the airline ramp supervisor belonged to a class of transportation workers based on the actual work she performed, and "not what [her employer] does generally." According to the dissent, *Saxon* "makes plain" that the "scores" of truck drivers in the United States who work directly for retailers and manufacturers instead of for traditional trucking companies do not stop being transportation workers "the moment they are brought in-house." The dissent also argued that, even if a transportation-industry requirement were the correct standard, not all of a company's workers are necessarily in the same industry, and the plaintiffs are better characterized as working in the trucking industry, not the bakery industry as the majority held.

Two federal circuits have rejected a transportation-industry requirement. The Seventh Circuit held that "a trucker is a transportation worker regardless of whether he transports his employer's goods or the goods of a third party." Similarly, the First Circuit has construed *Saxon* as meaning that working in a transportation industry is neither sufficient nor necessary to qualify as an exempt transportation worker. Additionally, in a recent First Circuit case involving the same bakery defendants from *Bissonnette*, the court ruled that the bakery drivers were transportation workers under Section 1.

Considerations for Congress

Whether the FAA applies to an arbitration agreement can have significant consequences. Even if the FAA does not apply, state law may provide for enforcing the arbitration agreement in some cases. In other cases, however, state laws may not be as favorable to arbitration as the FAA. For example, although the Supreme Court has ruled that class-action waivers in arbitration agreements are enforceable under the FAA, class-action waivers may be unenforceable under state law when the arbitration agreement is not governed by the FAA.

If Congress disagrees with the Supreme Court's eventual decision in *Bissonnette*, or otherwise seeks to change or clarify the scope of the FAA's exemption, it may enact legislation to do so. For example, Congress could amend 9 U.S.C. § 1 to clarify the types of workers covered under the exemption.

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