

Supreme Court and Appellate Alert

Akin Gump
STRAUSS HAUER & FELD LLP

Courts Should Decide Whether Federal Arbitration Act Applies, Even if Arbitration Agreement Delegates Such Questions to Arbitrator

January 16, 2019

Key Points

- The Supreme Court held that courts should determine whether disputes are excluded from arbitration under the FAA, even if the parties agreed that arbitrators should decide all questions of arbitrability.
- The Court also held that the exemption under Section 1 of the FAA for “contracts of employment” of transportation workers applies to both independent contractors and employees in the trucking industry.

Background

Dominic Oliveira (“Oliveira”) worked for New Prime—an interstate trucking company—pursuant to an independent contractor operating agreement, which contained a mandatory arbitration provision specifying that an arbitrator should decide threshold questions of arbitrability.

Oliveira brought a class-action lawsuit against New Prime, alleging violations of the Fair Labor Standards Act. New Prime moved to compel arbitration, which Oliveira opposed on the grounds that the independent contractor operating agreement is exempt from arbitration under Section 1 of the Federal Arbitration Act (FAA)—which applies to “contracts of employment of . . . workers engaged in foreign or interstate commerce”—and that the question of applicability of the Section 1 exemption was one for the court to decide.

The 1st Circuit’s Opinion

The 1st Circuit held that disputes over the applicability of FAA statutory exemptions are for courts to decide before they can compel arbitration. Therefore, it analyzed the FAA exemption for “contracts of employment” for transportation workers and found that it applies to truck-driving independent contractors like Oliveira, and denied New Prime’s motion to compel arbitration.

Contact

Rex Heinke

Partner
rheinke@akingump.com
Los Angeles
+1 310.229.1030

Anthony Pierce

Partner
apierce@akingump.com
Washington D.C.
+1 202.887.4411

Jessica Weisel

Senior Counsel
jweisel@akingump.com
Los Angeles
+1 310.229.1055

Jenna Mersereau Nalchajian

Associate
jnalchajian@akingump.com
Los Angeles
+1 310.229.1079

The U.S. Supreme Court's Opinion

In a unanimous opinion written by Justice Gorsuch, the Supreme Court affirmed.

The Court held that courts must first determine whether any Section 1 or 2 exclusion applies to the contract before they can order arbitration. It also found that a court's authority to compel arbitration does not extend to all contracts "no matter how emphatically they may express a preference for arbitration" if they are excluded from arbitration under the FAA. The Court applied this reasoning even to contracts like *New Prime's*, which contain a "crystal clear" clause giving the arbitrator authority to decide such threshold questions of arbitrability.

Because it found that courts should determine whether FAA exemptions apply to contracts, the Court analyzed the Section 1 exemption for "contracts of employment" of transportation workers. Applying the fundamental canon of statutory interpretation that "words generally should be interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute," the Court held that, when the FAA was adopted in 1925, the phrase "contracts of employment" was not a term of art and was used interchangeably with "work" in general. Therefore, the Court found that this exception encompassed both independent contractor and employee relationships.

New Prime raised policy arguments in opposition, saying that the Court should order arbitration to fulfill Congress' "effort to counteract judicial hostility to arbitration." The Court rejected this argument, holding that courts are not "free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal." Instead, the Court chose to "respect the limits" that Congress adopted in the FAA and declined to "look beyond the Act" to compel arbitration.

Conclusion

New Prime could have a significant impact on transportation companies and workers because it could essentially eliminate arbitration as a means of alternative dispute resolution in that industry, despite carefully crafted contracts to the contrary. The Court, however, left open whether arbitration could be compelled on grounds other than the FAA.