



FAA Not Applicable to Contracts with Transportation Workers, Even If They Are Independent Contractors

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In *New Prime, Inc. v. Oliveira*, the United States Supreme Court held that the Federal Arbitration Act (“FAA”) does not apply to contracts with independent contractors in the transportation industry. This decision is very important for transportation companies because, to the extent a contract with any transportation worker contains a mandatory arbitration provision, the arbitration provision is not covered by, and is no longer enforceable under, the FAA.

THE FAA DOES NOT APPLY TO “CONTRACTS OF EMPLOYMENT OF SEAMAN, RAILROAD EMPLOYEES, OR ANY OTHER CLASS OF WORKERS ENGAGED IN FOREIGN OR INTERSTATE COMMERCE”

Under the FAA, the parties to a valid and otherwise enforceable contract that contains an arbitration provision are legally required to arbitrate disputes covered by the arbitration provision. See 9 U.S.C. § 2. If one of the parties to the contract refuses to honor an agreement to arbitrate then the other party has the legal right to file a lawsuit against the non-compliant party and a federal court can compel the non-compliant party to arbitrate the dispute and the court can order that any litigation that has already been filed by the non-compliant party be stayed during the pendency of the arbitration. See 9 U.S.C. §§ 3-4.

However, the FAA does not apply to certain types of contracts. Specifically, the FAA does not apply to “contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.” See 9 U.S.C. § 1 (emphasis added).

In *New Prime*, the Supreme Court concluded that the phrase “contracts of employment” means all agreements to perform work, including contracts with independent contractors. See *New Prime, Inc.*, 586 U.S. _____, Slip Op. pg. 7 (January 15, 2019). Therefore, even if a transportation worker is correctly classified as an independent contractor, a contract with that person is a “contract of employment” and, therefore, is not subject to the FAA.

FACTS OF NEW PRIME, INC. V. OLIVEIRA

New Prime is a trucking company whose agreements with independent contractor truck drivers contain a mandatory arbitration provision for all disputes arising from the contract.

Dominic Oliveira, a truck driver who entered into an independent contractor agreement with New Prime, filed a class action wage and hour lawsuit against New Prime alleging that he and other similarly situated truck drivers were misclassified and, as a result, had not received proper wages for the hours they worked. New Prime moved to compel arbitration. After the district court and the First Circuit Court of Appeals concluded that the FAA did not apply to Mr. Oliveira’s contract, the U.S. Supreme Court granted certiorari to resolve the confusion amongst the lower courts on this issue. The sole question before the Court was whether the transportation worker exemption applied to employees and independent contractors or solely to employees.

In a unanimous opinion (with Justice Kavanaugh not participating), the Supreme Court held that all contracts with transportation workers, regardless of whether the workers are employees or independent contractors, are exempt from the FAA.

The opinion, which was authored by Justice Gorsuch, reminded New Prime, and all other litigants, that a public policy, no matter how strongly favored, cannot be used as a justification for ignoring the plain meaning of a statute’s text:

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"Left to appeal to the Act's policy, New Prime suggests that this Court order arbitration to abide Congress' effort to counteract judicial hostility to arbitration and establish a favorable federal policy toward arbitration agreements. Courts, however, are not free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal." *Id.* at Slip. Op. pg. 3.

KEY TAKEAWAYS

1. The FAA does not apply to contracts with independent contractor transportation workers.
2. Employers in the transportation industry should seek the guidance of legal counsel to determine whether and how this decision affects their business.

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