June 15, 2022

Supreme Court Addresses Transportation-Worker Exemption to Federal Arbitration Act

U.S. Supreme Court Rules That Airline Cargo Loaders Are Exempt From the Federal Arbitration Act

SUMMARY

Among other things, the Federal Arbitration Act (FAA) authorizes U.S. courts to enforce arbitration agreements in "contract[s] evidencing a transaction involving commerce," but excludes from its scope "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." On June 6, 2022, the U.S. Supreme Court ruled in *Southwest Airlines Co.* v. *Saxon*, 596 U.S. ___, 2022 WL 1914099 (June 6, 2022), that workers "who load cargo on and off airplanes belong to a 'class of workers in foreign or interstate commerce'" to which the FAA does not apply.[1] In an 8-0 opinion[2] authored by Justice Thomas, the Court affirmed a decision by the Seventh Circuit Court of Appeals and, in reaching its decision, opined that a worker's actual job duties—rather than the industry category to which his or her employer belongs—should be used to "define the relevant 'class of workers'" applicable to the claimant.[3] The Court reiterated its holding in *Circuit City Stores, Inc.* v. *Adams*, that the *ejusdem generis* canon instructs courts to interpret the residual category of workers exempted from the FAA, *i.e.*, "any other class of workers engaged in foreign or interstate commerce," in light of the specifically exempted categories of "seamen" and "railroad employees."[4]

The Court rejected Respondent Latrice Saxon's attempt to define the relevant class of workers more broadly—all airline employees who carry out the "customary work" of the airline—and Petitioner Southwest Airlines' attempt to define the relevant class more narrowly—only those workers who physically transport goods or people across foreign or international boundaries.[5] The Court also rejected the FAA's "proarbitration purposes" as a reason to interpret to the FAA to exclude cargo loaders.[6] The Court expressly

declined to decide, however, whether "'supervision of cargo loading alone would suffice' to exempt a class of workers under [Section] 1" or whether the FAA applies to classes of workers whose duties are "further removed from the channels of interstate commerce or the actual crossing of borders."[7]

BACKGROUND

Saxon, a ramp supervisor for Southwest Airlines, trained and supervised ramp agents responsible for physically loading and unloading cargo on and off aircraft traveling across the country.[8] Like many other ramp supervisors, Saxon also frequently loaded and unloaded cargo alongside the ramp agents.[9]

Saxon brought a putative class action under the Fair Labor Standards Act of 1938 against Southwest for allegedly failing to pay proper overtime wages to ramp supervisors, seeking to recover overtime wages.[10] Southwest moved to dismiss the suit, invoking Section 2 of the FAA to enforce the arbitration agreement in Saxon's employment contract, which required her to arbitrate wage disputes individually.[11] Section 2 of the FAA authorizes courts to enforce arbitration agreements in "contract[s] evidencing a transaction involving commerce." In response, Saxon invoked Section 1 of the FAA, which exempts from the statute's ambit "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Saxon argued that like "seamen" and "railroad employees," ramp supervisors are an exempt class of "workers engaged in foreign or interstate commerce."[12]

The District Court sided with Southwest. Following Fourth and Ninth Circuit district court decisions interpreting "transportation worker," the District Court held that only those workers involved in "actual transportation" fell within Section 1's exemption.[13] On appeal, the Seventh Circuit panel reversed, ruling that "[t]he act of loading cargo onto a vehicle to be transported interstate is itself commerce, as that term was understood at the time of the [FAA's] enactment in 1925."[14]

THE SUPREME COURT'S DECISION

The Court held that applying its "ordinary, contemporary, common meaning," the relevant "class of workers" is determined by reference to the workers' performance of work, rather than the industry to which their employer belongs.[15] The Court reasoned that the FAA's use of "engaged" and "workers"—as opposed to "employees"—indicates that the class is defined by the worker's actual job duties rather than her employment category.[16] The Court observed that the ordinary meaning of "engaged in . . . commerce," means involvement in, among other things, the transportation of goods, and concluded that "any class of workers directly involved in transporting goods across state or international borders falls within [Section] 1's exemption."[17] The Court held that "airline employees who physically load and unload cargo on and off planes traveling in interstate commerce are, as a practical matter, part of the interstate transportation of goods."[18]

The Court noted that Section 1's statutory context confirms this reading. The Court explained that in its earlier decision in *Circuit City Stores, Inc.* v. *Adams*, the Court applied two canons of statutory interpretation to conclude that Section 1 of the FAA exempts only contracts with "transportation workers": the meaningful-variation canon (the use of a materially different term is presumed to denote a different idea) and the *ejusdem generis* canon (a "general or collective term" at the end of a list of specific items should be interpreted in light of common attributes shared by the specific terms).[19] The Court reasoned that because cargo loaders "play a direct and 'necessary role in the free flow of goods' across borders," the central feature of a transportation worker, cargo loaders are exempt from the statute's ambit under Section 1 of the FAA.[20] The Court further reasoned that because Section 1 exempts as a matter in foreign commerce "agreements relating to wharfage"—*i.e.*, agreements for payment to access a cargo-loading facility—"then an individual who actually loads cargo on foreign-bound ships docked along a wharf" and "any class of workers that loads or unloads cargo on or off airplanes bound for a different State or country[,] [are] 'engaged in foreign or interstate commerce.'"[21]

The Court rejected Saxon's invocation of the *ejusdem generis* canon to define the relevant "class of [transportation] workers" as "all airline employees who carry out the 'customary work' of the airline," explaining that because "seaman" constitutes "a *subset* of workers engaged in the maritime shipping industry," the exempted groups under Section 1 "cannot share a 'common attribute' of identifying transportation workers on an industrywide basis."[22] The Court also rejected Southwest's three arguments to define the relevant class as only those workers who "physically move goods or people across foreign or international boundaries."[23] The Court explained that Southwest's application of *ejusdem generis* could not succeed because Southwest conceded that the category of "railroad employees" "does not necessarily share the attribute" that the airline preferred to read into the catchall provision of "any other class of workers engaged in . . . commerce."[24] The Court further distinguished the cases the airline invoked to show that cargo loaders lack the necessary nexus to interstate commerce.[25] The Court finally held that although the statutory purpose of the FAA can inform its interpretation when the "'purpose is readily apparent from the FAA's text,'" it could not "elevate vague invocations of statutory purpose over" the plain text of Section 1.[26]

In its decision, the Court expressly declined to address "'whether supervision of cargo loading alone would suffice' to exempt a class of workers under [Section] 1," noting that the airline did not "meaningfully contest[] that ramp supervisors like Saxon frequently load and unload cargo."[27] The Court also declined to resolve the application of Section 1 to other workers, like Amazon last-mile delivery drivers and Grubhub food delivery drivers, whose "duties [are] further removed from the channels of interstate commerce or the actual crossing of borders," observing that "the answer will not always be so plain" as in this case.[28]

IMPLICATIONS

Following this decision, employers will no longer be able to invoke the FAA to prevent airline cargo loaders from litigating their employment disputes. But it remains to be seen how courts will apply this decision in cases involving workers who play other roles in transporting goods or passengers.

In light of the Court's guidance on determining the relevant "class of workers" and the meaning of "engage in . . . commerce," employers may wish to consider the application of the FAA to specific categories of employees based on their actual job duties and connection to the transport of goods or passengers across state or international boundaries. It may also be prudent for employers to consider updating arbitration agreements to provide for application of a state arbitration statute should the FAA not apply, as the Court's ruling does not preclude a lower court from enforcing an arbitration agreement under state law.

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ENDNOTES

1 *Southwest Airlines*, 2022 WL 1914099, at *6.

2 Justice Barrett was recused and took no part in the consideration or decision of the case.

3 *Southwest Airlines*, 2022 WL 1914099, at *4.

4 *Id.* at *5 (citing *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 115 (2001)).

5 *Id.* at *6-7.

6 *Id.* at *8.

7 *Id.* at *4-5, nn. 1 & 2.

8 *Id.* at *3.

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Saxon* v. *Southwest Airlines Co.*, 2019 WL 4958247, at *6-7 (N.D. Ill. Oct. 8, 2019).

14 *Saxon* v. *Southwest Airlines Co.*, 993 F.3d 492, 494 (7th Cir. 2021).

15 *Southwest Airlines*, 2022 WL 1914099, at *4.

16 *Id.*

17 *Id.* at *5.

18 *Id.*

19 *Id.* at *5-6 (citing *Circuit City*, 532 U.S. at 109, 115–18).

20 *Id.* at *6 (quoting *Circuit City*, 532 U.S. at 121).

21 *Id.* at *6.

22 *Id.* at *7 (citing *Ali* v. *Fed. Bureau of Prisons*, 552 U.S. 214, 224 (2008)) (emphasis added).

23 *Id.*

24 *Id.*

25 *Id.* at *7-8.

26 *Id.* at *8 (quoting *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 344 (2011)).

27 *Id.* at *4 & n. 1.

28 *Id.* at *5, n. 2 (citing *Rittmann* v. *Amazon.com, Inc.*, 971 F.3d 904, 915 (9th Cir. 2020), and *Wallace* v. *Grubhub Holdings, Inc.*, 970 F.3d 798, 803 (7th Cir. 2020)).

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