The US Supreme Court Walks Back Arbitration as a Way to Resolve Disputes Between Carriers and their Independent Contractors

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To resolve disputes with its independent contractors, motor carriers frequently include broad mandatory arbitration clauses in their agreements with those contractors. Courts will usually compel arbitration under those agreements through application of the 1925 Federal Arbitration Act (FAA). From a motor carrier perspective, the benefit of an FAA based arbitration clause is swifter, less public, and uniform resolution of disputes across many states. For the largest fleets, the FAA also eliminates the threat of class actions. From an independent contractor's perspective, those benefits may be not so beneficial. However, the United States Supreme Court's December decision in New Prime v. Oliveira stuck a small blow to motor carriers. The decision should force carriers to rewrite their arbitration clauses away from the FAA and toward state based arbitration statutes.

In summary, the New Prime case determined that the FAA does not sweep as broadly as carriers thought, at least as it relates to "workers" in foreign or interstate commerce. Mr. Oliveira claimed he was really a New Prime employee entitled to unpaid wages and wanted to proceed in court not in arbitration. New Prime sought to move the dispute out of the court under the FAA based arbitration provision of its agreement with Mr. Oliveira. Mr. Oliveira objected claiming the FAA doesn't apply to him as interstate transportation "worker".

The first part of the case discussed whether an arbitrator or a court must make the initial decision whether a dispute under contract containing an FAA arbitration clause is subject arbitration. The Supreme Court determined that a court, not an arbitrator, must make that early decision. The Supreme Court based its analysis both on the substance and relative order of the FAA's provisions. Specifically, a court, not an arbitrator, must determine whether Section 1 of the FAA applies before proceeding to analyze the following sections of the act. If the FAA applies, then a court can take over to resolve the dispute under the FAA's following sections. If the FAA does not apply, the dispute is subject to a court's jurisdiction.

The second part of the case involved whether Mr. Oliveira is subject to the FAA at all. Important to the Court, and therefore to everyone else, Section 1 to the FAAA contains a curious exception to the otherwise sweeping provisions act. Specifically, Section 1 says, "nothing" in the FAA, "shall apply" to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce". The New Prime court ruled that before a case can move to the FAA's later substantive sections (which strongly support arbitration), a court must determine if the one of the FAA's exceptions, specifically the one listed above, applies. Unfortunately for New Prime, and any other carrier relying on the shelter of the FAA, the Court ultimately determined, based on Congress' intent in 1925, that Mr. Oliveira is a "worker" in "foreign or interstate commerce" and therefore not subject to the FAA. Whether Mr. Oliveira prevails on his original claim for unpaid "wages" is left for a later court to decide.

Looking ahead, this case requires, at a minimum, that interstate carriers turn away from the FAA in their independent contractor agreements for disputes involving "worker" type issues. One refuge may be state law. Most states have arbitration statutes which do not contain the curious exemptions contained in the FAA's Section 1. However, moving to state arbitration statutes upsets the uniformity the FAA formerly provided. Moving to state law also requires careful thought in choosing the right state's arbitration statute to be sure that it can be lawfully applied to the parties. This means that carriers might need to choose different state laws for different independent contractors. It may also mean they must carefully analyze the arbitration act of each state chosen to understand the protections it may, or may not, provide both the carrier and the contractor. Carriers should give the effect of New Prime serious consideration. **TM**