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Federal Court Finds Arbitration Act's Transportation-Worker Exemption Inapplicable to Local Delivery Driver

by Brad Davis

Can a local delivery driver who never crosses state lines escape arbitration, even when the goods he delivers are manufactured out of state? No, according to a recent decision from a federal district court in Florida. In *Bean v. ES Partners, Inc.*, released April 4, 2021, the Southern District of Florida joined a growing number of courts that have weighed in on whether such workers qualify as transportation workers engaged in interstate commerce. No. 20-62047, 2021 WL 1239899 (S.D. Fla. Apr. 4, 2021). *Bean* held that the plaintiff delivery driver was not such a worker, and the court ordered him to arbitrate his unpaid overtime claims against the company that hired him.

What's the connection between arbitration and drivers who deliver goods? Transportation workers who engage in interstate commerce are among those workers exempt from the Federal Arbitration Act ("FAA"). Under FAA Section 1, if someone qualifies as a transportation worker engaged in interstate commerce, then an arbitration agreement involving that person is not enforceable under the FAA.

The scope of this exemption has received growing attention from federal courts over the past few years, driven partly by gig economy work arrangements and the prevalence of arbitration agreements between workers and the companies that hire them. But there's no clear definition of "transportation worker"—nor is there consensus about what it means to be "engaged in interstate commerce." *Id*. at *4. Three federal Circuits have addressed this issue, and two tests have emerged. *Bean* held that the plaintiff failed them both.

Background

Defendant ES Partners, Inc. d/b/a Med-Line Express Services ("Med-Line") and Bean entered into an Independent Contractor Agreement under which Bean served as a "route driver" responsible for picking up and delivering medication to Med-Line's customers. The agreement included an arbitration provision broadly covering claims for violations of state or federal law. In September of last year, Bean sued Med-Line in Florida state court for unpaid overtime in violation of Florida law and the FLSA. Med-Line removed the case to federal court and later moved to compel arbitration under both the FAA and Florida law. Bean opposed the motion, primarily arguing that he fit into the FAA's Section 1 exemption.

The FAA and Section 1 Exemption

The FAA generally requires courts to honor arbitration agreements involving interstate commerce. But Section 1 of the FAA contains a narrow exemption for "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." That third category, "any other class of workers engaged in foreign or interstate commerce," is generally referred to as the exemption's residual clause. *Id*. at *3. In *Circuit City v. Adams*, the Supreme Court held that the residual clause applies

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only to contracts for "transportation workers" rather than all contracts for employment. 532 U.S. 105, 119 (2001). The Court also said that the phrase "engaged in…interstate commerce" must be construed narrowly. *Id*. at 115-16.

And more recently in *New Prime Inc. v. Oliveira*, the Court confirmed that Section 1 applies to both independent-contractor and employment relationships. 139 S. Ct. 532, 543-44 (2019). But beyond these general guidelines, the Supreme Court has not defined the finer contours of the Section 1 exemption, leaving the lower courts, at least for now, to hash it out among themselves. The Eleventh Circuit, which covers Florida, has not addressed this exact issue, but three other Circuits have. The Seventh Circuit has adopted one test, and the First and Ninth Circuits have adopted another, somewhat less restrictive test.

Applying the Two Tests

The first test *Bean* considered originated in *Wallace v. Grubhub Holdings, Inc*., 970 F.3d 798 (7th Cir. 2020). There, the Seventh Circuit stated that the Section 1 inquiry "is always focused on the worker's active engagement in the enterprise of moving goods across interstate lines." *Wallace*, 970 F.3d at 802. Noting the "restrictiveness" of this test, the *Bean* court found it "unsurprising[]" that *Wallace* held that local drivers who only delivered meals intrastate did not fit within the Section 1 exemption. *Bean*, at *5. *Wallace* also expressly rejected the same argument Bean made, namely that Bean was engaged in interstate commerce because many of the medications and medical devices he delivered were manufactured out of state. *Id*. The main point of the *Wallace* test, as noted by *Bean*, was that to qualify for the exemption, "the workers must be connected *not simply to the goods, but to the act of moving those goods across state or national borders*." *Id*. (quoting *Wallace*, 970 F.3d at 802) (emphasis in *Bean*). Because Bean never personally moved goods across state lines, he failed the *Wallace* test. *Bean*, at *5.

The court then turned to the "less restrictive" test adopted by the First and Ninth Circuits. *Id*. at *6. At issue in both of those cases was whether the Section 1 exemption applied to Amazon's "last mile" delivery drivers, local drivers who deliver packages on the last leg of the interstate journey. *See Waithaka v. Amazon.com, Inc*., 966 F.3d 10 (1st Cir. 2020); *Rittmann v. Amazon.com, Inc*., 971 F.3d 904 (9th Cir. 2020). According to *Bean*, the main distinction between this second test and the one in *Wallace* is what each test focuses on. "Unlike the Seventh Circuit's test, which asks whether the *worker* travels across state lines, the First and Ninth Circuits focus on the *goods* themselves." *Id*. (emphasis in original). *Waithaka* and *Rittmann* both held that Amazon's drivers fit within the Section 1 exemption. *Bean* noted that those holdings depended on a key factual finding: "both courts relied on the *continuity* of the goods' travel—*viz*., on their having not yet come to rest—rather than on their (interstate) provenance." *Id*. (emphasis in original). *Bean* quoted a passage from *Rittmann* explaining how the concept of goods "coming to rest" determined whether Amazon's drivers were engaged in interstate commerce within the meaning of Section 1:

> Amazon packages do not 'come to rest,' at Amazon warehouses, and thus the interstate transactions do not conclude at those warehouses. The packages are not held at warehouses for later sales to local retailers; they are simply part of a process by which a delivery provider transfers the packages to a different vehicle for the last mile of the packages' interstate journeys. The interstate transactions between Amazon and the customer do not conclude until the packages reach their intended destinations, and thus AmFlex drivers are engaged in the movement of interstate commerce.

Id. (quoting *Rittmann*, 971 F.3d at 916). From this, *Bean* concluded that the *Waithaka*/*Rittmann* test has two elements: (1) the delivery company must be in the business of interstate transportation; and (2) the packages must still be in the "stream" of commerce when the driver delivers them locally. *Bean*, at *7. Applying this test, the court first noted that Bean was much more like the employee in *Wallace* than he was like the Amazon drivers in *Waithaka* and *Rittmann*. *Id*. The court then reasoned that Bean failed to carry his burden of proving either element:

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> [Bean] has utterly failed to show—as *Rittmann* and *Waithaka* require—that the medications he delivers are still in the 'stream' or 'flow' of interstate commerce when he delivers them. He has, in other words, failed to establish that, before he delivers them, the goods have not first 'come to rest' somewhere in Florida. Nor has he demonstrated—as the first *Rittmann* element mandates—that Med-Line is in the business of transporting medications across state lines.

Id. After concluding that Bean's unpaid overtime claims were subject to arbitration under the FAA, the court rejected his additional arguments that the agreement was not enforceable under Florida law and that the agreement violated the NLRA. *Id*. at *8-13. The court severed the attorneys'-fee provision from the agreement but found the agreement otherwise complied with Florida law. *Id*. at *8-10.

Overall, *Bean* highlights the schism between *Wallace* on the one hand, and *Waithaka/Rittmann* on the other. The former test focuses on the worker while the latter focuses on the goods themselves, particularly whether those goods have "come to rest" somewhere before entering the plaintiff's possession. Might the Supreme Court resolve this Circuit split? We'll see. The Court denied certiorari in *Rittmann*, 141 S. Ct. 1374 (Feb. 22, 2021), but the cert. petition in *Waithaka* remains pending as of publication.

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