The Arbitration Newsletter

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The Arbitration Newsletter is published periodically by Whitaker Chalk Swindle & Schwartz PLLC, Fort Worth, Texas, to explore the rapidly developing law and practice of commercial arbitration both in the U.S. and other countries.[1]

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The Transportation Worker Exemption

Southwest Airlines Co. v. Saxon[2]

The Federal Arbitration Act ("FAA") mandates that courts must enforce private arbitration agreements in "contract[s] evidencing a transaction involving commerce…." [3] However, Section 1, also known as the "transportation worker" exemption, excludes from the FAA's scope "contracts of employment of seamen, railroad employees, *or any other class of workers engaged in foreign or interstate commerce*."[4] As recently as 2019, the Supreme Court, in *New Prime v. Oliveira*, interpreted Section 1.[5] In a unanimous decision, the Court held that an independent contractor agreement containing an arbitration clause between an interstate trucking company and one of its drivers fell within "contracts of employment."[6] Therefore, the court could not force the driver to arbitrate his employment claims.[7]

In its most recent case addressing the arbitration exemption for transportation workers, the Supreme Court opined whether, under Section 1 of the FAA, airline ramp employees who load and unload cargo from planes are part of a "*class of workers engaged in foreign or interstate commerce*."[8] In *Southwest Airlines v. Saxon*, Latrice Saxon, a ramp supervisor for Southwest Airlines, brought a putative collective action under the Fair Labor Standards Act for "fail[ure] to pay proper overtime wages to her and other ramp supervisors." [9] As a ramp supervisor, she was required to manage ramp agents and frequently assist in "load[ing] and unload[ing] baggage, airmail, and commercial cargo on and off airplanes that travel[ed] across the country."[10]

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[1] Nothing in The Arbitration Newsletter is presented as or should be relied on as legal advice to clients or prospective clients. The sole purpose of The Arbitration Newsletter is to inform generally. The application of the comments in The Arbitration Newsletter to specific questions and cases should be discussed with the reader's independent legal counsel. My thanks to Kayla McCallum, a third-year law student at Texas A&M University School of Law, for her research and drafting assistance.

[2] 142 S. Ct. 1783 (2022).

[3] 9 U.S.C. § 2.

[4] 9 U.S.C. § 1.

[5] New Prime Inc. v. Oliveira, 139 S. Ct. 532 (2019).

[6] *Id.* at 543–44.

[7] *Id.*

[8] Sw. Airlines Co. v. Saxon, 142 S. Ct. at 1787.

[9] *Id.*

[10] *Id.*

Southwest sought enforcement under the FAA of the arbitration agreement within Saxon's employment contract from the District Court for the Northern District of Illinois, in which "she agreed to arbitrate wage disputes individually."[11] In response, Saxon invoked Section 1 of the FAA and contended she was part of a "class of workers engaged in foreign or interstate commerce."[12] Siding with Southwest Airlines, the District Court held that only those involved in "actual transportation" and not the "mere handling of goods" within interstate commerce fell within the exemption.[13] The Seventh Circuit reversed, holding that "the act of loading cargo onto a vehicle to be transported interstate is itself commerce, as the term was understood at the time of the FAA's enactment in 1925."[14]

To resolve a conflict between the Seventh Circuit's decision and an earlier decision of the Fifth Circuit, the Supreme Court granted certiorari.[15] In an 8-0 opinion written by Justice Thomas, with Justice Barrett not participating in the decision, the Court affirmed the Seventh Circuit.[16] To determine whether Saxon fell within the requisite class of workers, the Court took a two-step approach.[17] First, the Court defined the "class of workers" to which Saxon belonged, then "determine[d] whether that class of workers is 'engaged in foreign or interstate commerce.'"[18]

To define the "class of workers," Saxon argued for an industry-wide approach and stated that she belonged to the class of "airline employees."[19] Conversely, Southwest contended that workers should be classified based on *their* conduct and not their *employer's*; therefore, the relevant class "includes only those airline employees who are actually engaged in interstate commerce in their day-to-day work."[20] The Supreme Court rejected both arguments and held that Saxon is a member of a "class of workers based on what she does at Southwest…."[21] Therefore, she belonged to a class of workers "who physically load and unload cargo on and off airplanes on a frequent basis."[22]

Turning to the second inquiry, the Court established that "any class of workers *directly involved* in transporting goods across state or international borders falls within §1's exemption."[23] Airplane cargo loaders were such a class because "the loading or unloading of an interstate shipment by the employees of a carrier is so closely related to interstate transportation as to be practically a part of it."[24] Therefore, Saxon and workers like her belonged to a "class of workers in foreign or interstate commerce."[25]

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[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.* at 1788.
[16] *Id.* at 1793.
[17] *Id.* at 1788.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 1789.
[23] *Id.*
[24] *Id.* (quoting Baltimore & O. S. W. R. Co. v. Burtch, 44 S. Ct. 165, 166 (1924)).
[25] *Id.* at 1790.

The Court then addressed Southwest's argument that Section 2 of the FAA broadly requires courts to enforce arbitration agreements.[26] The Court opined that it was "not free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal."[27] For the Court, the plain text of Section 1 exempted cargo loaders from the FAA's scope.[28] The Court was in no position to "elevate vague invocations of statutory purpose over the words Congress chose."[29]

OBSERVATIONS

1. The U.S. Supreme Court has moved from policy slogans (e.g., "strong federal policy favoring arbitration" and "liberal federal policy favoring arbitration agreements") to careful statutory interpretation of the FAA.

2. This nuanced change of FAA interpretation is seen in *New Prime Inc. v. Oliveira*.[30]

3. *Morgan v. Sundance, Inc.* also limited the effect of FAA's "policy favoring arbitration" to "treating arbitration contracts like all others, not about fostering arbitration."[31]

4. *Southwest Airlines* underscores *Prime v. Oliveira* that a parties' arbitration agreement should always be examined first for whether the 9 U.S.C. §1 exemption applies to the parties.

5. The second question asks whether there are state law contract defenses to the arbitration agreement in question.[32]

6. "Strong" or "liberal" federal policy favoring arbitration does not create a state contract defense or a federal procedural rule affecting an arbitration contract as a contract.

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[26] *Id.* at 1792.
[27] *Id.*
[28] *Id.*
[29] *Id.* at 1792–93.
[30] "[I]t's a 'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary … meaning … at the time Congress enacted the statute.'" 139 S. Ct. at 539.
[31] 142 S. Ct. 1708, 1713 (2022) (holding that waiver by litigation conduct of a party's contractual right to arbitrate does not require prejudice to the opposing party under state contract law or federal procedural rules; 142 S. Ct. at 1711–12).
[32] 9 U.S.C. § 2.