



Amazon Delivery Drivers Win Transpo Worker Exempt Status

By Linda Chiem

Law360 (April 23, 2019, 6:58 PM EDT) -- Amazon must face a proposed collective action alleging the e-commerce giant misclassified drivers as independent contractors after a Washington federal judge said Tuesday that the drivers fit the definition of transportation workers who are exempt from the Federal Arbitration Act.

U.S. District Judge John C. Coughenour denied a bid by [Amazon.com](#) Inc. and Amazon Logistics Inc. to [force arbitration](#) in a collective Fair Labor Standards Act action after finding that the independent contractor drivers fell within the FAA's transportation worker exemption because "they delivered packaged goods that are shipped from around the country and which are delivered to consumers untransformed."

Section 1 of the FAA exempts from arbitration "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." But Section 2 of the FAA governs whether the FAA applies in the first place and broadly relates to "contract[s] evidencing a transaction involving commerce."

The delivery drivers got a big boost from the U.S. Supreme Court, which said in its [January ruling](#) in *New Prime v. Oliveira* that transportation workers engaged in interstate commerce, including those classified as independent contractors, are exempt from the Federal Arbitration Act. *New Prime* was a [rare win for workers](#) given that the high court in recent years has blessed arbitration agreements in a series of decisions, including in last year's *Epic Systems Corp. v. Lewis*.

Judge Coughenour said Tuesday that drivers Freddie Carroll, Raef Lawson, Iain Mack, Bernadean Rittmann and Julia Wehmeyer are in fact transportation workers because "courts in this circuit have recognized that, in order for a delivery driver to qualify for the transportation worker exemption, the delivered good must have originated, or transformed into its final condition, in a different state than the delivery state."

"Defendants are in the business of delivering packages and goods across the country that are not transformed or modified during the shipping process," the judge explained. "Plaintiffs deliver goods in the same condition as they were shipped, and the goods are shipped around the country."

To answer the transportation worker exemption question, courts also consider whether a strike by a group of the employees at issue would interrupt interstate commerce.

The delivery drivers had argued that given the size and reach of Amazon today, a strike by Amazon drivers could indeed have an enormous impact on the national economy, stranding thousands upon thousands of packages at warehouses and terminals and preventing them from reaching their destinations. Judge Coughenour agreed.

"A strike by plaintiffs would be akin to local UPS or FedEx drivers striking — a strike by UPS or FedEx drivers, who only personally travel intrastate, would cause a ripple effect in interstate commerce because goods traveling interstate would still not make it to their final destination," the judge said. "Therefore, plaintiffs fall within the FAA's transportation worker exemption."

Judge Coughenour also rejected Amazon's argument that Washington law is clearly applicable to enforce the arbitration provision in the event that the FAA ultimately doesn't apply.

"Here, if the parties intended Washington law to apply if the FAA was found to be inapplicable, they would have said so or even remained silent on the issue. Instead, they did the opposite — in the governing law provision [of the workers' contracts], the parties explicitly indicated that Washington law is not applicable to the arbitration provision," Judge Coughenour said. "Indeed, it appears that it is precisely against the parties' intent to apply Washington law to the arbitration provision."

Given that they weren't explicitly clear on that point, the judge said that there simply isn't a valid agreement to arbitrate.

The drivers' attorney Shannon Liss-Riordan of Lichten & Liss-Riordan PC hailed Tuesday's ruling as a "big victory."

"We can now pursue the class action in court on behalf of drivers who Amazon is ripping off by misclassifying them as independent contractors," she said. "I filed this case in 2016 and have been waiting for this ruling since then, which is very significant. Amazon is one of the richest companies in the world and is owned by the richest man in the world. I think it can afford to pay its workers properly."

The decision is a blow to Amazon, which had argued that the drivers made local deliveries within state lines and were trying to stretch New Prime to fit their circumstances.

"Plaintiffs' argument that local delivery drivers are exempt from the FAA cannot be reconciled with the transportation worker exemption's language or underlying purposes or the weight of relevant case law," Amazon argued in court documents.

Amazon had argued that New Prime didn't bolster the drivers' arguments because New Prime didn't even address the meaning of "engaged in interstate commerce," given that both sides in that dispute already agreed that the plaintiff Dominic Oliveira qualified as a "worker engaged in interstate commerce."

"Under Section 1 [of the FAA], it is not enough for local drivers to be in some attenuated sense 'involved in the flow of interstate commerce because they facilitate the transportation of goods that originated across state lines,'" Amazon said.

Amazon, which has declined to comment on pending litigation, did not immediately respond to a request for comment on Tuesday's ruling.

The delivery drivers are represented by Shannon Liss-Riordan, Harold Lichten and Adelaide Pagano of Lichten & Liss-Riordan PC and Michael C. Subit of Frank Freed Subit & Thomas LLP.

Amazon is represented by Richard G. Rosenblatt and James P. Walsh of Morgan Lewis & Bockius LLP and Suzanne J. Thomas of K&L Gates LLP.

The case is Rittmann et al. v. [Amazon.com](https://www.amazon.com) Inc. et al., case number 2:16-cv-01554, in the U.S. District Court for the Western District of Washington.