Golden Gate University Law Review

Volume 51
Issue 1 *Ninth Circuit Survey*

Article 3

March 2021

Rittmann v. Amazon.com, Inc.: Ninth Circuit Rules Amazon's Drivers Fall Within the Federal Arbitration Act's "Transportation Worker Exemption"

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CASE SUMMARY

RITTMANN V. AMAZON.COM, INC.: NINTH CIRCUIT RULES AMAZON'S DRIVERS FALL WITHIN THE FEDERAL ARBITRATION ACT'S "TRANSPORTATION WORKER EXEMPTION"

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INTRODUCTION

Amazon is among a large list of corporations that have long tried to enforce mandatory arbitration against delivery drivers who file suit in their respective jurisdictions.[1] In recent years, delivery drivers have decided to fight back against private arbitration and to have their legal battles heard in court.[2] In these cases, delivery drivers argue that they are

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[1] *See, e.g.,* Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612 (2018) (holding that employees entering into contracts with employers providing for individualized arbitration proceedings to resolve employment disputes between parties were not entitled to litigate Fair Labor Standards Act or related state-law claims through class or collective actions in federal court); New Prime Inc. v. Oliveira, 139 S. Ct. 532 (2019) (holding that "contracts of employment" refer to agreements to perform work and also that Section 1 of the FAA is not solely limited to only employer-employee contracts); Rittmann v. Amazon.com, Inc., 971 F.3d 904, 908 (9th Cir. 2020) (holding that delivery drivers engaged in transportation of goods in interstate commerce even when they did not cross state lines are included in the exemption of Section 1 of the FAA).

[2] *See, e.g.,* Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612 (2018); New Prime Inc. v. Oliveira, 139 S. Ct. 532 (2019); Rittmann v. Amazon.com, Inc., 971 F.3d 904, 908 (9th Cir. 2020).

exempt from arbitration under the Federal Arbitration Act ("FAA") because they are engaged in interstate commerce.[3]

Section 1 of the FAA exempts from arbitration "contracts of employment of seaman, railroad employees, or any other class of workers engaged in foreign or interstate commerce."[4] Further, section 2 of the FAA governs whether the Act applies in the first place and broadly relates to "contract[s] evidencing a transaction involving commerce."[5]

In a recent Ninth Circuit decision, the court established that delivery drivers are exempt from mandatory arbitration, allowing drivers to keep their lawsuits in court.[6] In addition, the Ninth Circuit holding makes dismantling class or collective actions more problematic for transportation, logistics and gig-economy[7] companies.[8] The Ninth Circuit decision in *Rittmann v. Amazon* aligns with the recent First Circuit decision in *Waithaka v. Amazon.com, Inc.*, wherein the court more liberally defined what it means to be a worker "engaged in interstate commerce" according to the FAA.[9] This designation established by both the Ninth and First Circuits allows for drivers to pursue their legal battles in court rather than being forced into private arbitration.[10]

These circuit court decisions stemmed from the Supreme Court's ruling in *New Prime v. Oliveira*, where the Court stated that transportation workers engaged in interstate commerce, including those classified as independent contractors, are exempt from the FAA.[11] In fact, this Supreme Court ruling opened the door for delivery drivers to fight being forced into private arbitration.[12] Additionally, this 2019 decision by the Supreme Court contrasted with a string of its previous decisions, including *Epic Systems Corporation v. Lewis*, where the court favored arbitration agreements.[13]

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[3] *See, e.g.,* Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612 (2018); New Prime Inc. v. Oliveira, 139 S. Ct. 532 (2019); Rittmann v. Amazon.com, Inc., 971 F.3d 904, 908 (9th Cir. 2020). *See also* 9 U.S.C. § 1 *et seq*.

[4] *See* 9 U.S.C. § 1.

[5] *See* 9 U.S.C. § 2.

[6] *See Rittmann*, 971 F.3d at 910.

[7] The gig economy refers to "a labor market characterized by the prevalence of short-term contracts or freelance work as opposed to permanent jobs." *Gig Economy*, OXFORD ENGLISH DICTIONARY (2d ed. 2004).

[8] *See Rittmann*, 971 F.3d at 910.

[9] *See* Waithaka v. Amazon.com, Inc., 966 F.3d 10, 19-20 (1st Cir. 2020).

[10] *See Rittmann*, 971 F.3d at 910; *see also Waithaka*, 966 F.3d at 19-20.

[11] *New Prime*, 139 S. Ct. at 539 (2019).

[12] *Id.*

[13] *Lewis*, 138 S. Ct. at 1621.

I. BACKGROUND

A. FACTUAL BACKGROUND

In 2016, Plaintiffs Bernadean Rittmann ("Rittmann"), Freddie Carroll ("Carroll"), Julia Wehmeyer ("Wehmeyer"), and Raef Lawson ("Lawson") (collectively "Plaintiffs") contracted with Amazon Logistics, Inc. to provide delivery services for AmFlex.[14] Amazon Logistics, Inc. is a subsidiary of Amazon.com, Inc. ("Amazon"), a globally popular online retailer that sells its own products and provides fulfillment services for third-party sellers who purvey their products on Amazon's website.[15]

Typically, Amazon has contracted with and shipped products using larger third-party delivery providers such as FedEx and UPS.[16] However, due to the recent influx of orders by consumers, Amazon has supplemented those larger delivery services by contracting with local delivery providers through its AmFlex program.[17] The AmFlex program is available in certain metropolitan areas within the United States, and allows for Amazon to contract with individuals to make "last mile" deliveries of products from the Amazon warehouse to the products' destinations.[18] To make these deliveries, individuals use the AmFlex smart phone application and their own modes of transportation, including personal vehicles, bicycles, or even public transportation.[19] AmFlex participants pick up assigned packages from an Amazon warehouse and drive on a route assigned by the mobile application to deliver packages.[20] Occasionally, AmFlex providers cross state lines to make deliveries, but typically deliveries take place intrastate.[21] When the assigned shifts end, AmFlex participants return to the Amazon warehouse to drop off any undelivered packages.[22]

To sign up for the AmFlex program, individual participants must agree to the AmFlex Independent Contractor Terms of Service ("TOS") in the mobile phone application.[23] The TOS includes an arbitration clause which is coupled with a more specific provision in Section 11.[24] Section 11 of the TOS provides that "to the extent permitted by law, the

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[14] *Rittmann*, 971 F.3d at 907.
[15] *Id*.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.* at 907-08.
[24] *Id.* at 908.

parties agree that any dispute resolution proceedings will be conducted only on an individual basis and not on a class or collective basis."[25] In addition, the TOS states that it is governed by the Washington state law with the exception of Section 11, which is governed by the FAA.[26] Plaintiffs Rittmann, Carroll, and Wehmeyer opted out of arbitration when signing up for the AmFlex program.[27] Lawson, however, did not opt out, but nevertheless continued to make deliveries in the greater Los Angeles area.[28]

B. PROCEDURAL BACKGROUND

In 2016, Plaintiffs Rittmann, Carroll, and Wehmeyer filed a proposed collective and class action[29] lawsuit alleging that Amazon misclassifies AmFlex users as independent contractors rather than employees.[30] In 2017, plaintiffs filed a Second Amended Complaint that added Lawson as a plaintiff.[31] In the Second Amended Complaint, plaintiffs alleged that Amazon violated the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201, *et seq.*, the California Labor Code, and Washington state and Seattle municipal wage and hour laws.[32] The plaintiffs sought to bring their FLSA claims as a nationwide collective action, and their state claims as state-wide class actions.[33]

After filing the Second Amended Complaint, Amazon moved to compel Lawson's purported agreement to arbitration.[34] The district court stayed the proceedings pending the resolution of two Supreme Court cases and one Ninth Circuit case.[35] Subsequent to the Supreme Court's

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[25] *Id.* (emphasis omitted).

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] A class action is a procedural tool in which a large group of similarly situated *plaintiffs* may file a lawsuit based on common claims together as a class rather than as individuals. Comparatively, collective actions allow the aggregation of claims by similarly situated *individuals*. Collective actions are similar to class actions in that they simplify litigation and encourage efficiency. However, collective actions are limited to employment claims under both the Fair Labor Standards Act and the Age Discrimination in Employment Act. *See* Federal Rules of Civil Procedure Rule 23; *see also* Fair Labor Standards Act § 216(b) *and* Age Discrimination in Employment Act 29 U.S.C. §§ 621-634.

[30] *Rittmann*, 971 F. 3d at 908.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id. See, e.g.,* Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612 (2018) (holding that employees entering into contracts with employers providing for individualized arbitration proceedings to resolve employment disputes between parties were not entitled to litigate Fair Labor Standards Act or related state-law claims through class or collective actions in federal court); New Prime Inc. v.

decision in *New Prime*, both parties supplemented their briefing on the motion to compel.[36]

The district court denied Amazon's motion to compel.[37] The court found that the plaintiffs fell within the FAA's transportation worker exemption.[38] This exemption excludes "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" from the FAA's arbitration enforcement provisions.[39] Moreover, the court considered whether the arbitration provision set forth in Section 11 was otherwise valid and enforceable.[40] Pointing to the language of the TOS's governing law provision, the court determined that the FAA did not govern Section 11 because of the transportation worker exemption and the fact that the parties did not intend Washington law to apply.[41] In light of this rationale, the court decided that it was not clear whether Washington or Federal law would apply to the provision, or whether the parties intended to arbitrate disputes in the event the FAA was not applicable.[42] The district court held that there was not a valid agreement to arbitrate and denied Amazon's motion to compel.[43] The district court found that the drivers are transportation workers engaged in interstate commerce who are exempt under the FAA.[44] Amazon appealed, and the district court stayed proceedings pending the appeal.[45]

II. ANALYSIS

Amazon appealed to the Ninth Circuit Court of Appeals, which affirmed the district court in a 2-1 decision.[46] The Ninth Circuit began its analysis by determining whether the district court erred in finding that AmFlex delivery providers were exempt from the FAA as transportation workers "engaged in foreign or interstate commerce."[47] The court explained that to establish this exemption, they must first interpret the

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Oliveira, 139 S. Ct. 532 (2019) (holding that "contracts of employment" refer to agreements to perform work and that Section 1 of the FAA is not solely limited to employer-employee contracts).

[36] *Rittmann*, 971 F.3d at 908.

[37] *Id.*

[38] *Id.*

[39] *See* 9 U.S.C. § 1; *Rittmann*, 971 F.3d at 908.

[40] *Rittmann*, 971 F.3d at 908.

[41] *Id.* at 908-09.

[42] *Id.* at 909.

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.* at 907.

[47] *Id.* at 909; *see also* 9 U.S.C. § 1.

meaning of the phrase "engaged in interstate or foreign commerce" as used in Section 1 of the FAA ("Section 1").[48]

A. INTERPRETING THE PHRASE "ENGAGED IN INTERSTATE COMMERCE"

The court began by referencing the Supreme Court's decision in *Circuit City Stores, Inc. v. Adams*, where the Court addressed the scope and application of Section 1.[49] The Court held that Section 1 was narrow when applied to exempting transportation workers from the FAA.[50] The Court explained that it came to this conclusion by interpreting the plain language of the phrase to be narrow and in a manner consistent with the purpose of the FAA.[51] Although the Supreme Court limited the scope of the FAA's exemption to transportation workers, the Ninth Circuit noted that its decision does not address Amazon's specific issue of "whether transportation workers must cross state lines to be considered workers 'engaged in commerce' for the purposes of the exemption's application."[52]

To resolve this issue, the court established the plain meaning of the statutory text by looking to the "ordinary meaning at the time Congress enacted the statute."[53] The court noted that when Congress enacted the FAA, the word "engaged" meant occupied or employed.[54] Further, "commerce" is specifically defined as dealings through trade and traffic between people or states.[55] The court interpreted the combined terms to include "workers employed to transport goods that are shipped across state lines."[56] Additionally, the court noted that the ordinary meaning of the phrase does not necessarily exclude workers who deliver goods which originate out-of-state to an in-state designation as compared with those who exclusively deliver goods within states.[57]

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[48] *Rittmann*, 971 F.3d at 910; *see also* 9 U.S.C. § 1.

[49] *Rittmann*, 971 F.3d at 910; Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001).

[50] *Circuit City*, 532 U.S. at 118-19.

[51] *Id.* at 118.

[52] *Compare* Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001) (narrowly holding that contracts of employment of transportation workers are exempt from the FAA under Section 1, although Section 1 does not apply to all contracts of employment generally) *with Rittmann*, 971 F.3d at 910 (holding that delivery drivers engaged in transportation of goods in interstate commerce even when they did not cross state lines are included in the exemption of Section 1 of the FAA).

[53] *Rittmann*, 971 F.3d at 910; *New Prime*, 139 S. Ct. at 539 (alterations adopted) (internal quotation marks omitted) (quoting Wis. Cent. Ltd. v. United States, 138 S. Ct. 2067, 2074 (2018)).

[54] *Rittmann*, 971 F.3d at 910; *see also Engaged*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (1st ed. 1909).

[55] *Rittmann*, 971 F.3d at 910; *see also Commerce*, BLACK'S LAW DICTIONARY (2d ed. 1910).

[56] *Rittmann*, 971 F.3d at 910.

[57] *Id.*

The court cited to the First Circuit's decision in *Waithaka*, which held that AmFlex delivery providers fell within the Section 1 exemption.[58] The First Circuit followed a similar reasoning as the Ninth Circuit in this decision.[59] Moreover, the court noted that after the Supreme Court's decision in *Circuit City*, other circuit courts did not interpret the definition to require that workers actually cross state lines for the purposes of the Section 1 exemption.[60] The First Circuit followed a similar reasoning as the Ninth Circuit in its decision, and looked to contemporaneous statutes like the Federal Employer's Liability Act (FELA) to determine the correct interpretation.[61]

Amazon argued that the phrase "engaged in commerce" is not parallel to the term "engaged in *foreign or interstate commerce*" in Section 1 of the FAA.[62] In fact, Amazon argued that the court interpret the latter phrase in Section 1 so as not to read words out of the statute.[63] However, the court rejected this argument and explained that "the term 'in commerce' refers to interstate and foreign commerce," which is precisely the type of commerce that Congress has the power to regulate.[64] Further, when interpreting Section 1, the Supreme Court used the phrase "'engaged in commerce' as shorthand for [the exact words in the] statutory text: 'engaged in foreign or interstate commerce.'"[65] Thus, the court interpreted "engaged in commerce" in a more broad fashion so as not to require the crossing of state lines and concluded that Section 1 "exempts transportation workers who are engaged in the movement of goods in interstate commerce, even if they do not cross state lines."[66]

B. SECTION 1 AS IT APPLIES TO AMFLEX DELIVERY WORKERS

The Ninth Circuit explained that in light of its interpretation of the statute and record, it held "that AmFlex delivery providers belong to a class of workers engaged in interstate commerce," thereby falling within Section 1's exemption.[67] The court concluded that the AmFlex program

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[58] *Id.* (citing Waithaka v. Amazon.com, Inc., 966 F.3d 10, 13 (1st Cir. 2020)).

[59] *Compare Rittmann*, 971 F.3d at 910 *with Waithaka*, 966 F.3d at 13-15.

[60] *Rittmann*, 971 F.3d at 911 (quoting Lenz v. Yellow Transp., Inc, 431 F.3d 348, 351-52 (8th Cir 2005) (holding that, in addition, workers who cross state lines only incidentally "do not fall within the scope of § 1's exemption" because "their job duties are 'only tangentially related to [the] movement of goods'").

[61] *Rittmann*, 971 F.3d at 910-13.

[62] *Id.* at 914.

[63] *Id.*

[64] *Id.*

[65] *Id.* (citing *Circuit City*, 532 U.S. at 115, 116, 118).

[66] *Id.* at 915; *see also* U.S. CONST. art. I, §8, cl. 3.

[67] *Rittmann*, 971 F.3d at 915.

did not solely involve delivery of goods that originated in the same state as delivered.[68] Thus, the workers were not exclusively making intrastate deliveries.[69] AmFlex delivery providers are picking up packages from Amazon warehouses which have been transported across state lines.[70] Further, the court explained that these packages contain goods which remain in the stream of interstate commerce until AmFlex workers ultimately deliver them to their destination.[71] The court explained the distinction between interstate and intrastate using poultry.[72] In this respect, the court noted that live poultry coming from out of state "came to rest" when reaching their final destination – slaughterhouses.[73] Once the poultry reached the slaughterhouse, the interstate transactions related to the poultry ended.[74] Thus, because the poultry came to permanent rest at the slaughterhouses, any transactions thereafter "required *new* or *subsequent* transactions" taking place within the respective states.[75] The *Rittmann* court saw this poultry explanation as extremely helpful in distinguishing interstate and intrastate, which in turn did not fall in Amazon's favor.[76]

The Ninth Circuit distinguished cases such as this one from cases involving food delivery services, such as Uber Eats or Postmates.[77] The rulings in cases pertaining to the latter recognize that local food delivery drivers are exactly that: local.[78] They do not engage in the interstate transport of goods.[79] Prepared meals from restaurants do not fall into the classification of goods that are "indisputably part of the stream of commerce."[80] Unlike local food delivery drivers, AmFlex workers deliver goods that Amazon ships across state lines and which Amazon hires to complete the delivery of these goods.[81] The court explained that AmFlex workers are included in the *channels* of interstate commerce.[82] This determination is important because it establishes that AmFlex workers, although most stay within state boundaries for deliveries, are in fact a part

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[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.* at 916-17.
[73] *Id.* at 916.
[74] *Id.*
[75] *Id.* (emphasis added).
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.* (quoting Levin v. Caviar, Inc., 146 F. Supp. 3d 1146, 1153 (N.D. Cal. 2015)) (internal quotation marks omitted).
[81] *Id.* at 917.
[82] *Id.*

of the *channels* of foreign or interstate commerce which makes up the stream of commerce.[83] In support of its decision, the court explained that Amazon's business includes the selling of goods as well as the delivery of those goods, paralleling other businesses such as FedEx and UPS that the court considers to be involved in foreign and interstate commerce.[84] To that end, the court concluded that AmFlex workers are part of the channels of interstate commerce, establishing that they are engaged in interstate commerce.[85]

Therefore, the Ninth circuit affirmed the district court's ruling that AmFlex delivery providers fall within the Section 1 exemption of the FAA, even if those providers do not cross state lines to make deliveries.[86]

III. IMPLICATIONS

Following the Ninth Circuit's opinion, on September 25, 2020 the court denied a petition for rehearing en banc.[87] Amazon argued in its petition for rehearing en banc that the 2-1 decision would result in "extensive future litigation."[88] In addition, the United States Chamber of Commerce filed an amicus brief supporting Amazon's petition for rehearing en banc.[89] The Chamber of Commerce argued that without en banc review, the majority's decision would threaten to eliminate the benefits of arbitration.[90] The Ninth Circuit was clearly not persuaded by Amazon or the Chamber's arguments.[91]

Amazon has not yet petitioned for writ of certiorari in the Supreme Court of the United States but is likely to do so in the near future.[92] A Supreme Court decision could give delivery drivers of this type the abil-

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[83] *Id.*

[84] *Id.* at 918.

[85] *Id.* at 917.

[86] *Id.* at 919.

[87] Rittmann v. Amazon.Com, Inc., No. 1935381, 2020 U.S. App. LEXIS 30695, at *1 (9th Cir. Sep. 25, 2020).

[88] Amanda Ottaway, *9th Cir. Won't Rethink Amazon Loss on Driver Arbitration*, Law360 (Sep. 25, 2020, 10:11 PM), https://www.law360.com/retail/articles/1313960/9th-circ-won-t-rethink-amazon-loss-on-driver-arbitration.

[89] *Id.*

[90] Linda Chiem, *Chamber Asks Full 9th Circ. To Redo Amazon Driver Ruling*, Law 360 (Sep. 15, 2020), https://www.law360.com/articles/1310133/chamber-asks-full-9th-circ-to-redo-amazon-driver-ruling.

[91] Rittmann v. Amazon.Com, Inc., No. 1935381, 2020 U.S. App. LEXIS 30695, at *1 (9th Cir. Sep. 25, 2020).

[92] Ottaway, *supra* note 88, at 9.

ity to pursue wage collective and class actions in courts as opposed to arbitration.[93]

CONCLUSION

In *Rittmann*, the Ninth Circuit's decision affirmed the district court's denial of a motion to compel arbitration and established that AmFlex delivery drivers are exempt from mandatory arbitration.[94] This case confirms that delivery providers, such as those who work for Amazon, do not have to physically cross state lines to qualify for Section 1 exemption under the FAA.[95] If Amazon petitions for certiorari and the Supreme Court denies this petition, the underlying class and collective actions will continue to trial in the district court, where Amazon may face losing a substantial amount of money in damages.

[93] *Id.*
[94] *Rittmann*, 971 F.3d at 907.
[95] Ottaway, *supra* note 88, at 9.