

**Insights**

## **DIVIDED EIGHTH CIRCUIT PANEL FINDS UNLAWFUL RECRUITING OF TRUCK DRIVERS CASE SHOULD PROCEED**

Jul 21, 2020

CRST Expedited, Inc. (CRST), a long-haul trucking company, sued one of its competitors, TransAm Trucking, Inc. (TransAm), for alleged wrongful recruiting and hiring of long-haul truck drivers still under contract with CRST. *CRST Expedited, Inc. v. TransAm Trucking, Inc.*, No. 18-2633, 2020 WL 2745547, at \*1 (8th Cir. May 27, 2020). A divided Eighth Circuit panel construed Iowa state law in CRST's favor, reviving the case for further consideration on remand. *Id.*

To help combat driver shortages, CRST developed its own training program and fronts the costs, but requires in exchange that drivers sign a pre-employment agreement and work for CRST for at least ten months. *Id.* During this "Restrictive Term," drivers may not work for a competitor, whether they are discharged or leave voluntarily. *Id.* CRST partially recoups the costs of the training by paying drivers a reduced rate during the Restrictive Term, but after the Term, employment becomes at-will and drivers are paid market rate. *Id.*

In this case, 167 drivers left CRST while still under contract to work for TransAm. TransAm recruits licensed drivers with nationwide advertising and recruits must initiate contact. *Id.* TransAm typically offers up to \$6,000 in reimbursement for licensing costs, and although they do not offer this to drivers who were licensed through another trucking company's program, TransAm does pay market rate. *Id.* CRST notified TransAm multiple times about the contractual obligations of these drivers, but, according to CRST, TransAm continued to hire CRST drivers. *Id.* at \*2.

CRST then brought three claims against TransAm, including intentional interference with a contract and unjust enrichment.

On appeal, the court reversed the Northern District of Iowa and held that CRST had presented sufficient evidence to preclude summary judgment. *Id.* at \*4. Focusing on the causation element of intentional interference with a contract, the court explained that the issue here is whether there was an intentional inducement by the offer of superior terms that would cause the drivers to violate the non-compete provision in the CRST contract. *Id.* at \*4. The majority held that "[b]ut for the decision made by TransAm, a CRST competitor, to extend offers and employ drivers, the drivers would not be in breach of the non-compete provision." *Id.* The court continued:

While some drivers had initial contact with TransAm only after leaving CRST and some drivers were also applying to companies other than TransAm, a reasonable fact finder could conclude that the drivers would not have violated the non-compete provision absent TransAm's act of hiring. Although some of the drivers contacted TransAm only after leaving CRST, CRST presented evidence that many drivers return to CRST after a period of absence, suggesting the drivers would not have violated the non-compete provision had TransAm not hired them. And although some drivers applied to companies other than TransAm, CRST presented evidence that at least one other trucking company does not hire drivers who are subject to non-compete provisions.

*Id.* (citations omitted).

The majority also reversed the district court for the unjust enrichment claim, again finding that there was sufficient evidence to preclude summary judgment. Explaining that "benefit" is a broad term, encompassing "any form of advantage," the majority reasoned that "TransAm received the benefit of drivers who were trained at CRST's expense." *Id.* And regarding whether retention of the benefit is unjust, the court explained that claims under contract and tort or other predicate wrongs could satisfy this element. Given that the court had held there was sufficient evidence to preclude summary judgment for unlawful interference with the CRST contracts, there was sufficient evidence here to create a factual dispute for unjust retention of a benefit. *Id.*

In dissent, Judge Stras emphasized that, under Iowa law, when determining whether an interference was *improper*, the most important factor is motive. *Id.* at \*7. CRST, in his view, presented no evidence of improper motive—TransAm engaged in nationwide, not targeted, advertising, and they did not offer any kind of special deal to CRST drivers aimed at inducing breach. *Id.* However, Judge Stras's main point of disagreement is the role that non-compete agreements play in the improper interference analysis. *Id.* at \*8. In his view, the majority reasons that non-compete agreements "prohibit competition for employees altogether, targeted or not." *Id.* But non-compete provisions, the dissent concludes, are not relevant—they only tell us about the obligations between CRST and its drivers, not about the motives of TransAm. *Id.* Given the lack of evidence for improper motive, the dissent would have held that the unjust enrichment claims should fail too. *Id.*

TransAm also challenged the first element of the intentional interference test—that there was a contract—by claiming that the contract is invalid because the non-compete provision is an unenforceable restrictive covenant. *Id.* at \*4. TransAm claimed that the "provision is unenforceable because it does not protect a legitimate business interest, its terms are broader than necessary to protect the stated interest, and it amounts to a lifetime ban from the trucking industry." *Id.*

Affirming the district court, the Eighth Circuit held that, as a matter of law, "the CRST employment contract is valid for the purposes of" the intentional interference claim. *Id.* at \*5. The court quickly dismissed TransAm's arguments that the contract was *voidable*, but offered more analysis addressing whether the non-compete provision operates as a lifetime ban and whether that could

make the contract *void*. The court explained that, even assuming that Iowa courts would find a lifetime ban as against public policy, the non-compete provision does not amount to such a ban—for most drivers in the case, the Term is only ten months. *Id* at \*5. Even if the driver quits before the Term is up, the non-compete provision only restricts the driver for the remainder of the Term, not indefinitely, as TransAm argued. *Id*.

TransAm recently [petitioned](#) the Eighth Circuit for a rehearing or rehearing *en banc* of the May 27, 2020 decision.

## RELATED PRACTICE AREAS

- Appellate

## MEET THE TEAM



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