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SEVENTH CIRCUIT: KEY TAKEAWAYS FROM WALLACE V. GRUBHUB

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In a recent opinion, the Seventh Circuit decided that delivery drivers for a popular, nationwide mobile food-delivery service were not "engaged in foreign or interstate commerce" for purposes of determining whether they were exempt from coverage under the Federal Arbitration Act.

Grubhub, an online and mobile food-ordering and delivery marketplace operating in cities nationwide, considers its delivery drivers to be independent contractors rather than employees entitled to the protections of the Fair Labor Standards Act. A group of its drivers, who drove for Grubhub in Chicago, Portland, and New York, filed two putative class action lawsuits against Grubhub, alleging that Grubhub violated the Fair Labor Standards Act by failing to pay them overtime. The cases quickly hit a procedural roadblock, however, because each of the drivers had signed a "Delivery Service Provider Agreement" that required them to submit to arbitration for "any and all claims" arising out of their relationship with Grubhub. Based on these agreements, Grubhub moved to compel arbitration, and the district courts agreed. In so doing, the district courts rejected the drivers' argument that their contracts with Grubhub were exempt from the Federal Arbitration Act.

Section 1 of the Federal Arbitration Act exempts from the Act's coverage "contracts of employment" of two specifically enumerated categories of workers—"seamen" and "railroad employees"—and of a residual category of "any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. In the district courts and in a consolidated appeal of their cases in the Seventh Circuit, the drivers argued that they qualified as "workers engaged in foreign or interstate commerce," such that their Delivery Service Provider Agreements were exempt from the Federal Arbitration Act's coverage. The district courts and the Seventh Circuit disagreed. *See Wallace v. Grubhub Holdings, Inc.*, — F.3d —, 2020 WL 4463062, at *3 (7th Cir. August 4, 2020).

Relying on the Supreme Court's interpretation of Section 1 of the Federal Arbitration Act in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), the Seventh Circuit held that Grubhub's drivers, as a class, were not "engaged in foreign or interstate commerce" as that phrase is used in Section 1. *See Wallace*, 2020 WL 4463062, at *3. In reaching this conclusion, the Seventh Circuit limited application of Section 1's residual category to transportation workers who are "actually engaged in

the movement of goods in interstate commerce." *Id.* at *2 (quoting *Int'l Brotherhood of Teamsters Local Union No. 50 v. Kienstra Precast, LLC*, 702 F.3d 954, 956 (7th Cir. 2012). The Court further emphasized that "to fall within 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.* at *3. In other words, the mere fact that the goods transported by the drivers had crossed state lines was not enough to trigger Section 1. Because the drivers, as a class, had failed to demonstrate that they were actively involved in the interstate movement of those goods, they could not rely on Section 1 of the Federal Arbitration Act to avoid arbitration. *Id.* ("Section 1 of the FAA carves out a narrow exception to the obligation of federal courts to enforce arbitration agreements. To show that they fall within this exception, the plaintiffs had to demonstrate that the interstate movement of goods is a central part of the job description of the class of workers to which they belong.").

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