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Southwest Airlines v. Saxon: SCOTUS Left Much Unsaid in Ruling on Cargo Loaders' Exemption from Arbitration

by Brad Davis

Is a Southwest Airlines ramp supervisor a transportation worker engaged in interstate commerce within the meaning of the Federal Arbitration Act ("FAA")? Yes, said the Supreme Court last month. In *Southwest Airlines Co. v. Saxon*, 142 S. Ct. 1783 (June 6, 2022), the Supreme Court weighed in, albeit narrowly, on a question that has divided lower courts for several years: under the FAA, what workers qualify as transportation workers engaged in interstate commerce?

What's the connection among transportation workers, interstate commerce, arbitration, and an airline ramp supervisor? Under Section 1 of the FAA, if someone qualifies as a transportation worker engaged in interstate commerce, then an arbitration agreement involving that person is not enforceable. In *Saxon*, the Supreme Court held that a ramp supervisor belonged to a class of workers engaged in interstate commerce and was thus exempt under Section 1. This holding meant that the ramp supervisor's federal wage-and-hour claims against Southwest were not subject to arbitration.

This decision was certainly a win for the ramp supervisor, but it was narrow. The Court left open a number of questions about Section 1 and whether it applies to other workers performing different work in different situations. The boundaries of this arbitration exemption remain far from defined.

Background

Southwest Airlines employed Petitioner Latrice Saxon as a ramp supervisor at Chicago Midway International Airport. 142 S. Ct. at 1787. Her work involved training and supervising teams of ramp agents who physically load and unload baggage and other cargo from planes traveling across the country. *Id*. According to her uncontested testimony, she and other ramp supervisors would "frequently" (note this word, it's important) fill in as ramp agents and step in to load and unload cargo alongside ramp agents. *Id*. at 1788.

Saxon filed a putative collective action against Southwest alleging violations of the Fair Labor Standards Act. Southwest moved to dismiss and compel arbitration under the FAA because Saxon had agreed in her employment contract to arbitrate wage disputes individually. Saxon opposed the motion and argued she was a transportation worker engaged in interstate commerce and thus fell within Section 1's exemption. The district court rejected her argument. The Seventh Circuit reversed and held that Saxon was exempt from arbitrating her claims. The Supreme Court affirmed. *Id*. at 1787-88.

The FAA and Section 1 Exemption

The FAA generally requires courts to honor arbitration agreements involving interstate commerce. But Section 1 of the FAA contains an exemption for "contracts of employment of seamen,

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railroad employees, or any other class of workers engaged in foreign or interstate commerce." That third category, "any other class of workers engaged in foreign or interstate commerce," is generally referred to as the exemption's residual clause. In *Circuit City v. Adams*, the Supreme Court held that the residual clause applies only to contracts for "transportation workers" rather than all contracts for employment. 532 U.S. 105, 119 (2001). The Court also said the phrase "engaged in…interstate commerce" must be construed narrowly. *Id*. at 115-16.

The Supreme Court's *Saxon* Decision

Justice Thomas delivered a unanimous 8-0 opinion in which Justice Barrett took no part. The question before the Court was "whether Saxon falls within a 'class of workers engaged in foreign or interstate commerce.'" 142 S. Ct. at 1788. Answering it required two tasks: (1) defining the relevant "class of workers" to which Saxon belonged, and (2) determining whether that class of workers was "engaged in foreign or interstate commerce." *Id*.

Under the first inquiry, the Court rejected Saxon's argument that because air transportation is an industry engaged in interstate commerce, all airline employees constitute a "class of workers" covered by Section 1. *Id*. Instead, the Court said the proper focus was on the tasks the worker performs. "Saxon is therefore a member of a 'class of workers' based on what she does at Southwest, not what Southwest does generally." *Id*. Applying this to Saxon, the Court found that she belonged to "a class of workers who physically load and unload cargo on and off airplanes on a frequent basis." *Id*. at 1789.

Turning to the second inquiry, the Court held that the class of airplane cargo loaders to which Saxon belonged was "engaged in foreign or interstate commerce" under Section 1 of the FAA. According to the Court, "any class of workers directly involved in transporting goods across state or international borders falls within § 1's exemption." *Id*. The Court said it was "plain" that airplane cargo loaders like Saxon were part of the interstate transportation of goods. *Id*. "[O]ne who loads cargo on a plane bound for interstate transit is intimately involved with the commerce (*e.g.*, transportation) of that cargo." *Id*. at 1790.

The Court then rejected several arguments from both sides that were inconsistent with the Court's reasoning. Saxon argued that the "class of workers" should include all airline employees who carry out the "customary work" of the airline. The Court said this definition was too broad. *Id*. at 1790-91. Southwest, on the other hand, argued that workers exempted under Section 1 should include only those who physically move goods or people across foreign or interstate boundaries. The Court rejected this as too narrow. *Id*. at 1791-92. The Court also rejected Southwest's arguments that loading and unloading cargo lack a necessary nexus to interstate commerce and that the pro-arbitration purpose of the FAA supported a finding that cargo loaders were outside the scope of Section 1. *Id*. at 1792-93.

Open Questions Remaining After *Saxon*

Over the past few years, a number of lower courts have addressed whether certain workers fit within Section 1's exemption from arbitration. Those decisions vary in their interpretation of Section 1 and have resulted in splits of authority across the circuits. *Saxon* left unresolved many of the issues presented by that case law. Lower courts will continue grappling with a number of questions about the contours of Section 1, some of which include:

1. "Frequently" v. Infrequently Handling Cargo (or Other Goods)

The Court found that Saxon belonged to a class of workers engaged in interstate commerce based largely on her testimony that she "frequently" loaded and unloaded cargo traveling interstate. The

Court used the word *seven times* in its opinion to describe how often Saxon handled cargo. If frequent handling of interstate cargo weighed in favor of finding that Saxon was exempt under Section 1, does that mean *infrequent* handling would not have been enough to exempt Saxon? The Court didn't say. Like the Seventh Circuit, the Court expressly declined to answer whether "supervision of cargo loading alone" would suffice to exempt Saxon under Section 1. 142 S. Ct. 1789 at n.1. Also unanswered was whether minimal or sporadic loading of cargo would have been enough to exempt Saxon under Section 1. By emphasizing the frequency with which Saxon handled interstate cargo, the Court suggests that the reach of Section 1, at least for stationary workers like Saxon, will be informed by the degree to which those workers handle goods moving interstate. Where the tipping point is in that inquiry remains unclear.

2. What Does It Mean To Be "Engaged in Interstate Commerce?" And What's a "Transportation Worker?"

According to *Saxon*, a class of workers is "engaged in foreign or interstate commerce" when that class is "directly involved in transporting goods across state or international borders." *Id*. at 1789. But the Court didn't offer much explanation about what "directly involved" means. The Court also stated that to be a transportation worker exempted under Section 1, that worker "must at least play a direct and necessary role in the free flow of goods across borders and "must be actively engaged in transportation of [] goods across borders via the channels of foreign or interstate commerce." *Id*. at 1790. These judicial restatements of statutory language don't offer much help to other courts and litigants facing this issue. Nor is there much to be gleaned from the Court's conclusion, which it found to be mostly self-evident, that Saxon and her fellow airplane cargo loaders were a class of workers engaged in interstate commerce. *Id*. at 1789.

3. Intrastate Workers Handling Goods That Previously Moved Interstate

Are workers who only transport goods *intrastate* exempt under Section 1 if the goods they transport previously made an *interstate* journey? This precise—and enormously consequential—question has been addressed by several federal appellate courts. And those courts are split. In *Saxon*, the Court acknowledged this split of authority but expressly declined to touch it.

Five circuits have addressed this question, and three different answers have emerged. The Seventh and Eleventh Circuits focus on the movement of the worker, not the goods. Unless the worker physically moves across state lines with the goods, that worker does not fit within Section 1's exemption. *See Hamrick v. Partsfleet, LLC*, 1 F.4th 1337 (11th Cir. 2021); *Wallace v. Grubhub Holdings, Inc*., 970 F.3d 798 (7th Cir. 2020).

On the other hand, the First and Ninth Circuits have adopted a less-restrictive test that focuses on the movement of the goods, not the movement of the workers. In these circuits, the issue is whether the goods being transported are "moving in" or are "within the flow of" interstate commerce. These circuits held that local Amazon delivery drivers were engaged in interstate commerce and thus exempt under Section 1 even though they did not drive across state lines. These courts instead focused on the movement of the packages they delivered, which did not "come to rest" until they reached their final destination at the purchaser's doorstep. *See Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020); *Rittmann v. Amazon.com, Inc*., 971 F.3d 904 (9th Cir. 2020).

The Second Circuit has forged a third path that asks whether the worker is in the transportation industry. If not, then that worker is not a transportation worker within the meaning of Section 1's

residual clause. *See Bissonnette v. LePage Bakeries Park St., LLC*, 33 F.4th 650 (2d Cir. 2022) (holding that workers who moved baked goods intrastate to their final destination were in the bakery industry, not the transportation industry, and thus did not fit with Section 1's residual clause).

So what effect might *Saxon* have on these decisions and their different approaches? Saxon did not move across state lines, yet the Court found she still fit within Section 1's residual clause. It's hard to reconcile that conclusion with the approach adopted by the Seventh and Eleventh Circuits, which held the residual clause did not apply to intrastate delivery drivers. But it may be too much to interpret *Saxon* as a tacit rejection of that view given the Court's effort to distance such drivers from airplane cargo loaders. The Court acknowledged that unlike airplane cargo loaders, whether intrastate drivers fit within Section 1's exemption might not be so clear: "We recognize that the answer will not always be so plain when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders." 142 S. Ct. at 1789 n.2 (citing *Rittmann* and *Wallace*). For the time being, the answer will depend on the circuit in which the question is litigated.

4. Goods v. People

What if it's people, not goods, being transported? Does that distinction matter? *Saxon* did not address this, either. The First and Ninth Circuits have addressed it, and they both held that this distinction does indeed matter under Section 1. When goods are involved, as explained above, those courts examine the interstate movement and flow of the particular goods. In the context of rideshare drivers transporting passengers to and from airports, those same courts have held that those drivers are not exempt under Section 1. *See Cunningham v. Lyft, Inc.*, 17 F.4th 244 (1st Cir. 2021); *Capriole v. Uber Techs., Inc.*, 7 F.4th 854 (9th Cir. 2021).

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