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# Massachusetts Supreme Judicial Court Confirms Enforceability of Arbitration Agreements in Restaurant Delivery Company Employment Contracts

By Roger L. Smerage on October 3, 2022

Restaurant delivery services such as Grubhub became nearly ubiquitous during the height of the COVID-19 pandemic and remain part of the food service industry for the foreseeable future. Because employment disputes within this niche of the industry are common, the contracts that restaurant delivery companies use with their employees often contain arbitration provisions. But are those provisions enforceable?

In *Archer v. Grubhub, Inc.*, 490 Mass. 352 (2022), the Massachusetts Supreme Judicial Court answered that question with a resounding yes. In doing so, the SJC clarified that employees of restaurant delivery companies do not fall into the category of "transportation workers" that is otherwise exempt from arbitration agreements under federal law, which is consistent with the majority of state and federal courts to decide the issue in the context of restaurant delivery service employees.

**Background**

The Federal Arbitration Act ("FAA," 9 U.S.C. §§ 1-16) typically requires courts, including state courts, to enforce arbitration provisions in contracts, including employment contracts. But the FAA expressly exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" from this arbitration requirement.

Grubhub, like many restaurant delivery service companies, employs a fleet of delivery drivers who transport orders from participating restaurants to customers who place orders through the Grubhub platform. In 2017, Grubhub distributed an arbitration agreement to its drivers. Drivers that agreed to the terms of the agreement were required to submit all disputes arising out of or relating to their employment with Grubhub to private arbitration in lieu of seeking legal redress through the courts. .

In 2019, a group of former Grubhub drivers filed a lawsuit against the company in Massachusetts Superior Court alleging violations of several Massachusetts statutes governing the payment of employees, including the Wage Act (M.G.L. c. 149, §§ 148-150). Grubhub moved to compel arbitration based on its 2017 arbitration agreement with the drivers. The trial court concluded that the FAA's exception for "any other class of workers engaged in foreign or interstate commerce" applied to Grubhub's drivers and declined to compel arbitration. Grubhub appealed and the SJC took the case directly.

**Analysis**

Guided by a 2001 U.S. Supreme Court decision (*Circuit City Stores, Inc. v. Adams*, 532 U.S.

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105) and a host of federal Courts of Appeals decisions—including one involving Grubhub delivery employees—the SJC rejected the trial court's analysis and concluded that the FAA's so-called "residual exemption" did not apply. Specifically, the SJC concluded that although Grubhub's delivery employees are "transportation workers," they are not part of a "class of workers engaged in a foreign or interstate commerce."

As a starting point, the SJC recognized that "[a]s sweeping as the FAA is, … it is not unqualified" in light of the residual exemption. *Archer*, 490 Mass. at 355. "[I]n determining whether the exemption applies, the question is not whether any individual worker was engaged in interstate commerce, but whether the class of workers to which the individual belonged was engaged in interstate commerce." *Id.* at 356. As such, "the fact that the plaintiffs here did not cross State lines in their work for Grubhub is not dispositive; the relevant question is whether the class of workers to which the plaintiffs belonged was engaged in interstate commerce." *Id.*

But the SJC made clear that the residual exemption is not read in a vacuum, but should be construed within the context of the FAA. Based on the U.S. Supreme Court's *Circuit City Stores* decision, the SJC recognized "that the residual clause's scope is 'controlled and defined by reference to' the specifically enumerated categories of workers directly preceding it—namely, seamen and railroad employees." *Archer*, 490 Mass. at 357. Indeed, the SJC explained that "the Court in *Circuit City* rejected the argument that the residual clause extended to exempt a broad category of workers under all contracts of employment, and instead limited the residual clause to 'transportation workers' *actually engaged* in the movement of goods in interstate commerce." *Id.* (emphasis added).

Examining the landscape of federal jurisprudence, including other cases addressing the very same question the SJC considered here, the SJC concluded that "the residual clause exemption requires that the class of workers must be connected not simply to the goods, but to the act of moving those goods across state or national borders." *Archer*, 490 Mass. at 358 (quotations omitted). Although this does not require the employee to cross state borders him- or herself, it does require that the employee be "connected" to the process of moving goods across such borders. *See id.*

In concluding that Grubhub's delivery drivers lacked such a connection and thus did not fall within the residual exemption, the SJC considered the drivers' argument that they performed a service similar to "last-mile delivery drivers" for interstate transport companies, such as Amazon, or airline cargo loading employees. *See Archer*, 490 Mass. at 359-361. The SJC rejected that argument, however. In comparison to last-mile delivery drivers, where "[t]he last leg of the trip, even if it involved only a trip from the in-State warehouse to the in-State consumer, was a part of the ongoing and continuous nature of the interstate transit of the good to the customer who ordered it," in the case of restaurant delivery service drivers, "at the moment the goods at issue here entered the flow of interstate commerce, the destination was not the address of the Grubhub customer ordering the takeout food or convenience items for delivery" but instead "the local restaurants, delicatessens, and convenience stores that ordered them." *Id.*

In other words, the Grubhub drivers "transported goods that had already completed the interstate journey by the time the goods arrived at the restaurant, delicatessen, or convenience store to which they were sent." *Archer*, 490 Mass. at 360-61. The SJC reasoned that "the plaintiffs are dissimilar to the railroad workers, seamen, or the other limited, interstate class of workers contemplated by Congress when enacting [the residual exemption] of the FAA." *Id.*

The SJC noted that "all courts that have considered the applicability of the residual clause to delivery drivers similar to the plaintiff delivery drivers in this case have reached the same

conclusion." *Id.* at 359. That includes the U.S. Court of Appeals for the Seventh Circuit in a case involving Grubhub delivery drivers (*Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798 (7th Cir. 2020)).

**Conclusion**

In ruling that restaurant delivery service drivers are not subject to the FAA's residual exemption, the SJC in *Archer* joined the majority of courts that hold that an employer's arbitration agreement with this category of employees is enforceable. By doing so, the SJC clarified that restaurant delivery companies may take advantage of the benefits that arbitration may offer for resolving employee disputes, such as streamlined discovery and expedited hearings, and that employees entering into such agreements should be aware that they will not be permitted to have their employment disputes decided by a judge or a jury.

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