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Massachusetts High Court Limits Scope of Transportation Worker Exception to Statutory Arbitration Requirements

by Patrick J. Bannon and Barry J. Miller

Does the Federal Arbitration Act (FAA) require courts to enforce agreements between employers and employees to resolve disputes through individual arbitration—and not through class actions? Despite 30 years of constitutional, statutory, and contractual objections from the plaintiffs' bar, the answer is now mostly (though with important exceptions), "yes."

The Massachusetts Supreme Judicial Court (SJC) has long been on record as no fan of pre-dispute employment arbitration agreements. Yet, in its recent *Archer v. Grubhub, Inc.* decision,[1] it joined a growing consensus of courts in rejecting an interpretation of the FAA that would have excluded many employees from the FAA and allowed them to proceed with a class action lawsuit in court. The *Archer* decision is praiseworthy in at least three respects: it helps bring predictability to the enforceability of arbitration agreements—an important way for employers to reduce class actions; it shows a welcome appreciation of the complexity of the 21st century economy; and it is a refreshing example of judges interpreting a statute fairly, rather than straining for a preferred result.

What Did the SJC Decide? The primary issue in *Archer* was whether the FAA applied to an arbitration agreement between Grubhub and Veronica Archer, a food delivery driver who used the Grubhub app to arrange food deliveries from restaurants and stores to consumers. Archer wanted to claim "wages" on behalf of a large class of delivery drivers, but Grubhub moved to bind her to individual arbitration of her own claims, relying on the FAA.

Archer argued that the FAA did not apply. She relied on FAA Section 1, which states: "nothing herein contained shall apply to contracts of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce."[2] The quoted language had already been authoritatively interpreted to exclude the arbitration agreements only of transportation workers actually engaged in the movement of goods in interstate (or international) commerce. The trial court found that Archer sometimes delivered pre-packaged foods that had been manufactured outside of Massachusetts and that she was therefore engaged in the last step of the interstate transportation of the food she delivered.

In rejecting Archer's argument and reversing the trial court, the SJC looked closely at the economics of Archer's work. When the food that Archer delivered entered the flow of interstate commerce, its destination, the court noted, was a restaurant or store, not the Gruhub customer to whom Archer eventually delivered it. Thus, Archer was engaged not in the interstate transportation of goods but in the transportation of "goods that had already completed the interstate journey . . .. "

On Archer's interpretation, almost any goods or passengers would have been sufficiently linked to interstate commerce to implicate FAA Section 1. And any worker involved in moving the goods or passengers—before, during, or after they crossed state lines—could have been excluded from the FAA. Such an interpretation would render arbitration agreements difficult or impossible to enforce as to a large segment of the U.S. workforce.

[1] *Archer v. Grubhub, Inc.*, 490 Mass. 352 (2022).
[2] 9 U.S.C. § 1.

Patrick J. Bannon and **Barry J. Miller** are partners in the Boston, MA office of Seyfarth Shaw LLP.

The Decision Enhances Predictability. In rejecting Archer's interpretation, and adopting a more nuanced understanding of interstate commerce, the SJC joined ranks with the First, Third, Seventh, and Eleventh Circuits and at least six federal district courts.[3] Even though the contours of FAA Section 1 have not been fully defined, an employer can be reasonably confident that it can enter into enforceable arbitration agreements with its workers, even if its business sometimes involves the intrastate movement of goods or passengers that happened to have crossed state lines. Thus, the decision contributes to predictability in an area of law that has often been unsettled.

The SJC Showed Economic Sophistication. The 21st century economy is complex. When lawyers or judges parachute in to analyze a business sector, there's always a danger that they will overlook or disregard seemingly minor distinctions that have major economic significance to the market participants. In *Archer*, the plaintiff advocated just such an oversimplified approach: almost all goods move interstate so transporting goods, even locally, is the transportation of goods in interstate commerce. But the SJC recognized that interstate transportation and local transportation are distinct and took the trouble to identify and explain the difference.

The SJC Chose Judicial Craft Over Favored Outcome. In complex areas of the law, judges may have the opportunity to decide cases based on their personal preferences about how the world should be, rather than on neutral interpretation of statutes, rules, and prior court decisions. Some say it's unavoidable or even desirable for judges to impose their preferences. But for those who think judges should avoid doing that, the SJC's *Archer* decision is admirable.

When deciding on a clean slate, the SJC has expressed skepticism about requiring plaintiffs to participate in individual arbitration rather than class actions.[4] Yet, in *Archer*, the SJC respected the supremacy of the federal FAA statute and followed the FAA to the conclusion that statute dictates.

Congress has amended the FAA once this past year and continues to debate whether further change is desirable. By leaving such considerations to the political branches, the SJC in *Archer* has strengthened the perception that judges' decisions are dictated by governing law, and thereby enhanced respect for the courts.

The SJC Rejected Plaintiff's Contractual Defenses to Avoid Arbitration. In addition to attempting to avoid her obligation to arbitrate based on policy grounds and an attempted expansion of the transportation worker exception, Archer argued that she should not be required to arbitrate because she was not forced to review the terms of the arbitration agreement in the online portal on which she signed the contract. She also argued that Grubhub had waived its contractual right to arbitrate by failing to provide her with a copy of the agreement promptly in pre-suit communications. These tactics are common among plaintiffs seeking to avoid arbitration agreements, and fortunately, the SJC squarely rejected both arguments. The court recited the now well-established law pertaining to electronically signed or "clickwrap" agreements and noted that a party's failure to carefully read an agreement will not excuse the party from the contract's requirements, so long as the party had a reasonable *opportunity* to review the document. The court also rejected Archer's contention about Grubhub's failure to promptly provide her with a copy of the arbitration agreement, noting a lack of authority for "the conclusion that a party waives its right to arbitration when it fails to provide documents prior to the commencement of the lawsuit."[5]

On the whole, the SJC's *Archer* ruling is welcome news for organizations that seek to insulate themselves from costly class action litigation by using arbitration agreements. It signals that both federal and state courts will continue to honor and enforce those contractual obligations in the context of employment-related litigation.

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[3] *See Cunningham v. Lyft, Inc.*, 17 F.4th 244, 250-53 (1st Cir. 2021) (holding FAA Section 1 does not apply to primarily local rideshare drivers); *Singh v. Uber Techs. Inc.*, 939 F.3d 210, 227 (3d Cir. 2019) (remanding for district court to decide whether drivers belong to class of transportation workers who engage in work that is in effect part of interstate commerce); *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (holding Section 1 inapplicable to Grubhub delivery drivers); *Hill v. Rent-A-Center, Inc.*, 398 F.3d 1286, 1289-90 (11th Cir. 2005) (holding Section 1 inapplicable to account manager who incidentally delivered products); *see also Immediato v. Postmates, Inc.*, 2021 U.S. Dist. LEXIS 40288 (D. Mass. Mar. 4, 2021); *Grice v. Uber Techs., Inc.*, 2020 U.S. Dist. LEXIS 14803 (C.D. Cal. Jan. 7, 2020); *Austin v. DoorDash, Inc.*, 2019 U.S. Dist. LEXIS 169728 (D. Mass. Sep. 30, 2019); *Lee v. Postmates Inc*., 2018 U.S. Dist. LEXIS 176965 (N.D. Cal. Oct. 15, 2018); *Magana v. DoorDash, Inc.*, 343 F. Supp. 3d 891 (N.D. Cal. 2018); *Levin v. Caviar, Inc.*, 146 F. Supp. 3d 1146 (N.D. Cal. 2015).

[4] *See Feeney v. Dell Inc.*, 454 Mass. 192 (2009); *Machado v. System4 LLC*, 465 Mass. 508, *modified by* 466 Mass. 1004 (2013).

[5] 490 Mass. at 363, n. 10.

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