November 18, 2021

ADR Case Update 2021 - 21

Federal Circuit Courts

- **EMPLOYEE RECEIVED NOTICE AND ACCEPTED TERMS OF ARBITRATION AGREEMENT**

  Gezu v. Charter Communications
  2021 WL 5069353
  United States Court of Appeals, Fifth Circuit
  November 2, 2021

  Gezu worked for Charter Communications for 12 years. During that time, Charter emailed all active, non-union employees to announce a new employment-based legal dispute resolution program dubbed Solution Channel (the Program). The email instructed employees about their right to opt-out and provided a hyperlink to Charter's intranet, where additional information on the Program and opt-out instructions were available. After Gezu brought a pro se action against Charter, alleging discrimination based on his race and national origin, Charter moved to compel arbitration under the Program's arbitration clause. The court granted the motion to compel, and Gezu appealed.

  The United States Court of Appeals for the Fifth Circuit affirmed. To demonstrate that an arbitration agreement is a valid modification of the terms of employment, an employer must show that the employee received notice of the change and accepted the change. The record in this case shows both. Notice was not frustrated by Gezu's assertion that he did not read the email announcing the change. Under the mailbox rule, when there is a material question about whether a document was received, a sworn statement is credible evidence of mailing and creates a presumption of receipt. The declarations of Charter's VP of HR Technology and senior director of records management and eDiscovery were enough to create that presumption. The Court found that Gezu accepted the modification to his employment contract. The email announcing the change "conspicuously warned that employees were deemed to accept" the Program unless they opted out within 30 days. Gezu did not opt-out.

- **EMPLOYEES ESTOPPED FROM AVOIDING THEIR DUTY TO ARBITRATE**

  Reeves, et al. v Enterprise Products Partners, LP

2021 WL 5183636
United States Court of Appeals, Tenth Circuit
November 9, 2021

Darrell Reeves and James King worked as welding inspectors for Enterprise Products Partners through third-party staffing companies Cypress and Kestrel. After Reeves brought a collective action claim to recover unpaid overtime wages under FLSA, King consented to join the action and was added as a named plaintiff. Enterprise argued that Reeves and King signed employment contracts with their respective staffing companies that should compel arbitration for both parties in this case. The court denied the motion to compel, finding that the agreements were not binding between Reeves and King and Enterprise, who was not a signatory to the agreement. The court declined to apply the "concerted misconduct" or "intertwined-claims" theory of equitable estoppel because the Oklahoma Supreme Court had yet to adopt it. Enterprise appealed.

The United States Court of Appeals for the Tenth Circuit reversed and remanded. The scope of an arbitration agreement is a question of state contract law, presenting the Court with the task of determining whether OK's highest court would permit the non-signatory to enforce the arbitration clause. Though the OK Supreme Court had yet to address concerted misconduct estoppel, it had expressed willingness to enforce an arbitration agreement where a signatory was avoiding arbitration with a non-signatory, and the non-signatory was seeking to resolve issues that were intertwined with the agreement. The claims of Reeves and King against Enterprise were integrally related to their employment agreements with Cypress and Kestrel and alleged substantially interdependent and concerted misconduct by both their staffing companies and Enterprise. Reeves and King were thus estopped from avoiding their duty to arbitrate their claims arising out of their employment relationship with Cypress or Kestrel.

- **ARBITRATION AGREEMENTS DID NOT RESULT FROM UNDUE INFLUENCE OR ECONOMIC DURESS**

Martinez-Gonzalez v. Elkhorn Packing Co. et al.
2021 WL 5099986
United States Court of Appeals, Ninth Circuit
November 3, 2021

Martinez-Gonzalez (plaintiff) worked as a farm laborer for Elkhorn Packing Company. After quitting his job in the middle of his third season as a lettuce-harvester, plaintiff sued his former employers, alleging violations of federal and state labor and wage laws. Elkhorn later moved to compel arbitration under agreements signed by the plaintiff. The court refused to enforce the arbitration agreements, holding that the plaintiff signed them under economic duress and undue influence. Elkhorn appealed.

The United States Court of Appeals for the Ninth Circuit reversed and remanded. Economic duress occurs when one party commits a wrongful act, and that act is sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to agree to an unfavorable contract. Plaintiff asserted that Elkhorn committed a wrongful act by asking him to sign the agreement after he made the trip from Mexico to CA, where he was dependent on Elkhorn housing and already started work, but these circumstances, while "not ideal," did not constitute a wrongful act under CA law. The lower court found that plaintiff lacked reasonable alternatives to signing the agreement because his challenging financial situation required him to keep his job with Elkhorn. But these circumstances did not show a lack of reasonable alternatives. Plaintiff could have asked whether signing the agreement was necessary to keep his job – or revoked the agreement. Similarly, the plaintiff did not establish undue influence. The time and place of the orientation – held after the plaintiff traveled and occurring in a hotel parking lot without chairs – the lack of time to read the agreement, the pressure to sign after a long day's work, and statement from Elkhorn supervisors "exhorting workers to follow the company's rules," did not amount to excess pressure. While far from ideal, the conditions were a far cry from actions considered oppressive under CA law. The matter was remanded to determine whether the plaintiff's claims fell within the scope of the arbitration agreement.

- **RIDESHARE DRIVERS WERE NOT A CLASS OF WORKERS ENGAGED IN INTERSTATE COMMERCE WITHIN THE MEANING OF THE FAA EXEMPTION**

Cunningham v. Lyft
2021 WL 5149039
United States Court of Appeals, First Circuit
November 5, 2021

Plaintiffs, MA-based rideshare drivers who used the Lyft application and platform to find passengers, filed a complaint against Lyft, claiming that the rideshare company misclassified them as independent contractors rather than employees. The court denied Lyft's motion to compel arbitration and stay proceedings and subsequently denied drivers' motion for a preliminary injunction. Lyft appealed, and the drivers cross-appealed.

The United States Court of Appeals for the First Circuit affirmed in part and reversed in part. Plaintiffs asserted that they were among a class of transportation workers engaged in interstate commerce within the meaning of section 1 of the FAA 1) because they take passengers to and from Logan Airport for trips to and from other states and countries, and 2) because some Lyft drivers sometimes take fares across state lines. The Court disagreed. The first argument ran headlong into the instruction supplied by US v. Yellow Cab, where the Supreme Court held that when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. On the second argument, the Court concluded, as a matter of first impression, that Lyft drivers were not a class of workers engaged in interstate commerce. They are among a class of workers engaged primarily in local intrastate transportation, some of whom infrequently find themselves crossing state lines and are thus fundamentally unlike seamen and railroad employees when it comes to their engagement in interstate commerce. The Court also found that the preliminary injunction pending arbitration was not warranted, and the public injunction pending arbitration was not warranted.

Case research and summaries by Deirdre McCarthy Gallagher and Richard Birke.

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