

# Supreme Court Holds that the FAA's Transportation Exemption Applies to all Employees Involved in Interstate Transportation

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Enacted in 1925, the Federal Arbitration Act (FAA) reflects the nation's policy favoring arbitration agreements. Employers routinely rely on the FAA to compel aggrieved employees to press their disputes before an arbitrator, rather than in civil litigation.

The FAA, however, contains an exemption, specifying that "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." Last week, in a victory for employees, the US Supreme Court unanimously held that this "transportation exemption" applies to *all* workers engaged in transporting goods in interstate commerce, not just those in the transportation industry. The focus, in other words, is on the worker's duties, not their employer's industry.

Neal Bissonnette and Tyler Wojnarowski were distributors for Flowers Foods, Inc., which produces and markets baked goods. They brought a putative class action, contending that Flowers violated federal and state law by underpaying them. In response, Flowers filed a motion, under the FAA, asking the court to dismiss the case and compel arbitration.

The District Court granted the motion. And the Second Circuit affirmed.

Focusing on the industry in which Bissonnette and Wojnarowski worked, the Second Circuit held that the "transportation exemption" is inapposite. The exemption, according to the court, applies only "if the industry . . . pegs its charges chiefly to the movement of goods or passengers, and the industry's predominant source of commercial revenue is generated by that movement." Applying that test, the court concluded that Bissonnette and Wojnarowskis' "commerce is in breads, buns, rolls, and snack cakes—not transportation services."

The question before the Supreme Court was whether the FAA's transportation exemption is limited to workers in the transportation services industry. The Court answered "no."

The Second Circuit's industry-focused standard, the Supreme Court concluded, "would often turn on arcane riddles about the nature of a company's services."

"Does a pizza delivery company derive its revenue mainly from pizza or delivery? Do companies like Amazon and Walmart—which both sell products of their own and transport products sold by third parties—derive their revenue mainly from retail or shipping? Extensive discovery might be necessary to explore the internal structure and revenue models of a company before deciding a simple motion to compel arbitration. Mini-trials on the transportation-industry issue could become a regular, slow, and ex-pensive practice in FAA cases. All this "complexity and uncertainty" would "breed[] litigation from a statute that seeks to avoid it."

Instead, the Supreme Court endorsed an easier-to-apply, job-duties-focused standard. A transportation worker, the Court held, is one who is "actively" "engaged in transportation" of . . . goods across borders via the channels of foreign or interstate commerce." Thus, the exemption applies if the worker "at least play[s] a direct and 'necessary role in the free flow of goods' across borders", without regard to the industry in which he or she works.

The case is *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. \_\_\_, 2024 WL 1588708 (Apr. 12, 2024), and is available [here](#).

Given the Court's decision, businesses that retain workers involved in delivering goods in interstate commerce should (1) evaluate their arbitration agreements to determine whether they withstand scrutiny under the Supreme Court's standard; and (2) if not, decide how to recraft those agreements, perhaps based on state law, so that they remain enforceable.

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National Law Review, Volume XIV, Number 109

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