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Supreme Court Clarifies Scope of FAA's Transportation Worker Exemption

By Josh Wesneski and Crystal Weeks

In a unanimous decision written by Chief Justice Roberts, the Supreme Court held today in *Bissonnette v. LePage Bakeries Park St. LLC* that a worker need not work in the transportation industry to fall within the "transportation worker" exemption under Section 1 of the Federal Arbitration Act (FAA).

The FAA generally requires federal courts to enforce arbitration agreements, but Section 1 excludes from that requirement all "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The Second Circuit in this case held that a worker can be exempt from arbitration under this provision only if she works in the "transportation industry," that is, for a company that provides transportation services to third parties. The Supreme Court rejected that ruling, holding instead that employees involved in the transportation of goods for a producer and marketer of baked goods could qualify for the exemption. Focusing on the statutory text and its prior precedent, the Court observed that "§1 refers [only] to 'workers' who are 'engaged' in commerce," which "focuses on 'the *performance* of work' rather than the industry of the employer." The test the Court articulated for determining whether a worker is exempt from the FAA is whether the worker at least "play[s] a direct and 'necessary role in the free flow of goods' across borders."

The decision brings further clarity to the scope of Section 1 following the Court's decision two years ago in *Southwest Airlines Co. v. Saxon*, where the Court held that an airline ramp agent supervisor who occasionally loaded and unloaded baggage from airplanes was sufficiently engaged in foreign or interstate commerce to qualify for the Section 1 exemption. *Saxon* did not settle the question whether, to be exempt, an employee must work in the transportation industry, and courts had divided on whether employees of companies that are not common carriers but instead transport their own goods—such as Domino's pizza delivery and, in this case, the delivery of baked goods—qualify as "transportation workers." The Court's decision forecloses companies from arguing that the exemption does not apply to their workers on the theory that the company overall is not in the transportation industry. The Court thus cut off one line of argument that companies could

make in a motion to compel arbitration. But companies may still have a variety of other arguments for why Section 1 does not apply, and the Supreme Court reinforced that Section 1's scope is "appropriately narrow." Among other things, Section 1 does not apply to a contract between a company and its own worker unless that individual plays a "direct and necessary role in the free flow of goods across borders."

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