

United States Court of Appeals For the First Circuit

No. 19-1848

BERNARD WAITHAKA, on behalf of himself and
all others similarly situated,

Plaintiff, Appellee,

v.

AMAZON.COM, INC.; AMAZON LOGISTICS, INC.,

Defendants, Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Timothy S. Hillman, U.S. District Judge]

Before

Howard, Chief Judge,
Lipez, and Thompson, Circuit Judges.

David B. Salmons, with whom James P. Walsh, Jr., Noah J. Kaufman, Michael E. Kenneally, and Morgan, Lewis & Bockius LLP were on brief, for appellants.

Harold L. Lichten, with whom Shannon Liss-Riordan, Adelaide H. Pagano, and Lichten & Liss-Riordan, P.C. were on brief, for appellee.

Archis A. Parasharami and Mayer Brown LLP on brief for the Chamber of Commerce of the United States of America and the National Association of Manufacturers, amici curiae.

Corbin K. Barthold, Richard A. Samp, and Washington Legal Foundation on brief for Washington Legal Foundation, amicus curiae.

Toby J. Marshall, Blythe H. Chandler, Elizabeth A. Adams, Terrell Marshall Law Group PLLC, Jennifer D. Bennett, and Public

Justice on brief for Public Justice, amicus curiae.

July 17, 2020

LIPEZ, Circuit Judge. This putative class action requires us to decide whether employment contracts of certain delivery workers -- those locally transporting goods on the last legs of interstate journeys -- are covered by the Federal Arbitration Act ("FAA" or the "Act"), given its exemption for "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. We have not considered the scope of the exemption since the Supreme Court held in Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001), that this provision is limited to employment contracts of "transportation workers." After close examination of the text and purpose of the statute and the relevant precedent, we now hold that the exemption encompasses the contracts of transportation workers who transport goods or people within the flow of interstate commerce, not simply those who physically cross state lines in the course of their work.

Plaintiff-appellee Bernard Waithaka, a so-called "last mile" delivery driver for defendants-appellants Amazon.com, Inc. ("Amazon.com") and its subsidiary, Amazon Logistics, Inc. ("Amazon Logistics"),¹ falls within this category of transportation workers whose contracts are exempt from the FAA. Hence, we conclude that the FAA does not govern the enforceability of the mandatory

¹ We refer collectively to appellants as "Amazon."

arbitration provision of his employment agreement with appellants. Because that provision prohibits proceeding on a class basis, either in the arbitral or judicial forum, we also agree with the district court that the arbitration provision is unenforceable under state law. Therefore, we affirm the district court's denial of appellants' motion to compel arbitration.

I.

A. Factual Background²

Amazon.com and Amazon Logistics are based in Seattle, Washington. Amazon sells retail products online to customers throughout the United States. To "ensure that millions of packages reach their final destination as efficiently as possible," Amazon Logistics provides package delivery services "through the last mile of the order." Amazon attributes its success as "one of the world's largest online retailers," in part, to its "accurate and timely package delivery."

Historically, Amazon has used third-party delivery providers, such as FedEx, UPS, and the United States Postal Service, to deliver its products. In recent years, however, Amazon has also begun to contract with independent contractors for

² "Because [Amazon's] motion to compel arbitration was made in connection with a motion to dismiss or stay, we draw the relevant facts from the operative complaint and the documents submitted to the district court in support of the motion to compel arbitration." Cullinane v. Uber Techs., Inc., 893 F.3d 53, 55 (1st Cir. 2018).

delivery services through its Amazon Flex ("AmFlex") smartphone application. These contractors, like Waithaka, sign up for delivery shifts and then use their own methods of transportation -- typically, a private vehicle -- to deliver products ordered through Amazon within a specified timeframe and in compliance with other Amazon service standards. AmFlex contractors are paid an hourly rate for their delivery shifts. But if contractors require more time than a normal shift to complete all of their deliveries, they are not compensated for the additional time. Nor do they receive any reimbursement for their gas, car maintenance, or cellphone data expenses.

To begin work with AmFlex, a prospective contractor must download the AmFlex app, create an account, login, and agree to the AmFlex Independent Contractor Terms of Service (the "Agreement" or the "TOS"). The second paragraph of the TOS states:

YOU AND AMAZON AGREE TO RESOLVE DISPUTES BETWEEN YOU AND AMAZON ON AN INDIVIDUAL BASIS THROUGH **FINAL AND BINDING ARBITRATION**, UNLESS YOU OPT OUT OF ARBITRATION WITHIN 14 CALENDAR DAYS OF THE EFFECTIVE DATE OF THIS AGREEMENT, AS DESCRIBED BELOW IN SECTION 11.

Section 11 of the Agreement (the "dispute resolution section") further explains the arbitration requirement and also states that the parties waive their rights to bring class actions:

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