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## Are Truck Drivers Exempt from the FAA When Classified as Independent Contractors?

By Mitchell L. Marinello – June 6, 2018

On February 26, 2018, the Supreme Court granted [certiorari](#) to review the First Circuit's decision in [New Prime, Inc. v. Oliveira, 857 F.3d 7](#) (2017). *New Prime* deals with whether a truck driver, classified by his employer as an independent contractor, is exempt from the Federal Arbitration Act (FAA) and therefore entitled to sue his employer in court for work-related matters including the employer's alleged failure to pay him the minimum wage.

[Section 1](#) of the FAA states 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." In [Circuit City Stores, Inc. v. Adams](#), 532 U.S. 105 (2001), the Supreme Court held that this exemption did not apply to sales employees but only to "transportation workers." Since that time, several courts have held that section 1's exemption applies only to transportation employees, not to transportation workers who are independent contractors. *See e.g., Carney v. JNJ Express, Inc.*, 10 F.Supp.3d 848, 852–53 (W.D.Tenn.2014) ("If the [plaintiffs] are independent contractors, their claims are arbitrable under the FAA.")

Here, Oliveira signed an employment agreement stating that he was an independent contractor. The agreement contained an arbitration clause that delegated questions of arbitral jurisdiction to the arbitrator for decision. Oliveira brought a lawsuit against New Prime arguing that he was exempt from arbitration pursuant to section 1 of the FAA and therefore was not required to arbitrate. New Prime responded with a motion to compel arbitration, and the matter was taken up by the district court and then by the First Circuit.

The First Circuit held that the exemption found in section 1 of the FAA applies to all transportation workers regardless of how they are classified by their employer and that, a delegation clause notwithstanding, courts presented with a motion to compel arbitration must decide whether Section 1's exemption to the FAA applies, because courts cannot compel arbitration without first deciding that the FAA applies:

To recap, we hold that, when confronted with a motion to compel arbitration under § 4 of the FAA, the district court, and not the arbitrator, must decide whether the § 1 exemption applies. Additionally, we hold that transportation-worker agreements that establish or purport to establish independent-contractor relationships are "contracts of employment" within the meaning of the § 1 exemption.

*New Prime, Inc.*, 857 F.3d at 24.

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New Prime's petition for certiorari challenged both rulings. The [Supreme Court's decision](#) is expected sometime in June.

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