

The FAA Keeps On Flying: The Supreme Court and 'Southwest'

In *Southwest Airlines Co. v. Saxon*, 596 U.S. ___ (No. 21-309) (June 6, 2022) (*Southwest*), a unanimous U.S. Supreme Court declared that airline cargo handlers are workers in interstate commerce, and thus exempt from the enforceability of arbitration agreements, per an exception set forth in the Federal Arbitration Act. See 9 U.S.C. §1. In this, the second installment of our two-part article, we shall exposit the wisdom of that brand new landmark, and later explore its ramifications, if any, for the U.S. Court of Appeals for the Second Circuit's decision in *Bissonette* (see *The FAA Keeps On Trucking: The Second Circuit and 'Bissonette,'* New York Law Journal (July 13, 2022)) as well as future controversies.

Southwest opens with a masterful understatement; the airline "moves a lot of cargo" in interstate and foreign commerce, over 250 million pounds of it, according to government statistics. As a "ramp supervisor," the respondent personally loaded and unloaded some of that air freight.

Alleging that the air carrier had failed to properly pay overtime wages, *Saxon* commenced a class action, eschewing the arbitration clause in her employment agreement. When *Southwest* sought to enforce that arbitral accord, the respondent contended that she and her peers were "transportation workers" exempted from arbitration by §1.

Both Parties' Arguments Rejected

Southwest was remarkable for the manner in which the Supreme Court dismantled each side's respective arguments. First, there was *Saxon's* plea to apply *ejusdem generis*, the canon of statutory interpretation which states that when a generic statement is preceded by a specific listing, the former is cabined by the latter. The respondent urged the justices to accept her dual assumptions that

By
**Anthony
Michael
Sabino**



nearly every worker engaged in the airline's business bears the same relationship to interstate commerce as seamen and railroad employees, and that §1's exemption for transportation workers therefore encompasses *all* airline employees.

Not so, replied the high bench. Justice Clarence Thomas noted that, when the FAA was promulgated in 1925, the appellation "seaman" encompassed "only those who work on board a vessel." Therefore, the respondent's invocation of *ejusdem generis* was "unavailing because it proceeds from the flawed premise that 'sea-

'Southwest' does much to clarify the reach of the FAA's §1 exemption, as it now assumes the role of primary touchstone in this realm.

men' and 'railroad employees' are both industrywide terms." Holding that *Saxon's* argument swept too widely, the supreme tribunal declined to extend the statutory exception to "virtually all employees of major transportation providers."

In sharp contradistinction, the justices chided the petitioner's view as too myopic. *Southwest* contended that only those workers "who physically move goods or people" across borders (pilots, for instance) are exempt from arbitration, while cargo handlers, since they "do not ride aboard an airplane," are not. The air carrier argued for its own interpretation of *ejusdem generis*, one which would compel a narrow reading of the FAA's exception.

The high court was unmoved, finding that the canon "neither demands nor permits" such a constricted reading of §1. Justice Thomas criticized *Southwest's* convoluted thinking, specifically

its attempt to first "import" the constrained definition of "seamen" to the less precise definition of "railroad employees," and then "engraft [] that limit onto the catch-all provision" for transportation workers. *Ejusdem generis* demands that all specific terms in a statute be connected by common attributes before they can be utilized to confine a trailing generality (see *Ali v. Federal Bureau of Prisons*, 552 U.S. 214 (2008)), and the fact that the petitioner had already conceded that "railroad employees" is an ambiguous term negated any such possibility.

The supreme tribunal was equally dismissive of the airline's argument that the cargo handlers failed to qualify for the FAA's exemption, for reason that their responsibilities were more closely related to activities which the high bench had previously deemed insufficiently linked to interstate commerce. The precedents cited by *Southwest* were inapposite, declared Justice Thomas, because each addressed varieties of work "far more removed from interstate commerce than physically loading cargo directly on and off an airplane headed out of State." To the contrary, the veteran justice opined, "our case law makes clear" that there is a nexus between airplane cargo loaders and interstate commerce.

The titular air carrier's final argument was an interesting one. Looking to legislative intent, the petitioner urged that the FAA's pro-arbitration purpose suggests that any reading of the statute should be inclined toward "fewer §1 exemptions," not more.

To be sure, the unanimous court concurred that its precedents have always honored the strong federal policy favoring arbitration embodied in the statutory regime, insofar that the lawmakers' goals are "readily apparent." Nevertheless, that is not permission to "pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal," quoting *New Prime v. Oliveira*, 586 U.S. ___ (2019). In the matter at hand, the proviso's language amply demonstrates that cargo handlers reside beyond the domain of the FAA, "and we have no warrant to elevate vague invocations of statutory

ANTHONY MICHAEL SABINO is a partner at Sabino & Sabino, P.C. and a Professor of Law at Tobin College of Business, St. John's University. He may be reached at Anthony.Sabino@sabinolaw.com.

'Southwest'

«Continued from page 4

purpose over the words Congress chose.”

Having thus found that both sides' respective positions were erroneous, the Supreme Court proceeded to chart its own course.

The 'Southwest' Ruling

After first positing the two key determinations to be made by the court—defining the class of workers to which Saxon belonged, and then deciding if those individuals were engaged in interstate commerce—Justice Thomas, expositing his well-known fidelity to the “plain meaning” doctrine, proclaimed that the high bench would interpret the FAA's chosen terminology according to its ordinary, everyday connotations, and, furthermore, adjudge that language in context.

To those ends, *Southwest* first draws attention to the fact that §1 speaks of “workers,” as distinct

from “employees.” Consulting the dictionary (several, in fact), the high bench found that the former are defined as those performing work. The FAA proviso then proceeds to limit its reach to those “engaged” in work, meaning those occupied or involved in such tasks.

Justice Thomas noted that §1 “emphasizes the actual work that the members of a class, as a whole, typically carry out,” thereby requiring that Saxon be classified “based on what she does at Southwest, not what Southwest does generally.” The court thereby decreed that the respondent belonged to a class of workers who frequently load and unload cargo on and off airplanes, while at the same time parenthetically noting that the high bench was not considering whether the mere supervision of cargo loading alone might come within the ambit of the FAA exemption.

That resolved, the next question was whether this class of workers is engaged in interstate commerce? “[I]t is,” was the supreme tribunal's succinct reply. Once more binding

itself to the plain meaning of the statutory text, the high court first reminds that “engaged” means to be occupied or employed, while “commerce” includes the trans-

Reverting to 'Southwest,' this newly minted decision is another worthy addition to the pantheon of Supreme Court arbitration landmarks, one which, like its brethren, perpetuates the high tribunal's insistence that the language of the FAA must be interpreted in accordance with its plain meaning.

portation of goods. A fortiori, “any class of workers directly involved in transporting goods across state or international borders falls within §1's exemption.” *Southwest* accordingly proclaimed that airplane cargo handlers comprise such a category. And in yet another predictive footnote, Justice Thomas cautioned that “the answer will not always be so plain” when the workers in question are “further removed” from interstate commerce or crossing borders.

The final justification for this newest mandate was made more noteworthy by the fact that the paramount bench had roundly criticized both sides for misap-

plying *ejusdem generis*. The Justices' closing edict was that the same canon, properly applied to the case at bar, advised that the precision of “seamen” and “railroads employees” in §1 “controlled and defined” the remainder of the statutory exception.

Conclusion

In closing this two-part writing, we may now comment upon the remarkable confluence between

the Second Circuit's holding in *Bissonnette*, and the Supreme Court's proclamations in *Southwest*. Notable about the former is that the appellate panel, although opining a full month before the Justices issued their ruling, was somewhat prescient in anticipating the high bench's emphasis upon "work" bearing a sufficient nexus to interstate commerce as a prerequisite to invoking the FAA's exemption from arbitration.

Given that the Second Circuit characterized *Bissonnette's* labors as distributing baked goods, and not trucking them, it would seem that the lower court's holding comports with the supreme tribunal's later opinion. As such, we perceive no conflict which might endanger *Bissonnette's* validity. But one never knows.

Reverting to *Southwest*, this newly minted decision is another worthy addition to the pantheon of Supreme Court arbitration landmarks, one which, like its brethren, perpetuates the high tribunal's insistence that the language of the FAA must

be interpreted in accordance with its plain meaning. Moreover, this latest decree clarifies the appropriate methodology for deciding whether or not specific categories of "transportation workers" are eligible for the statutory exception, a task sometimes made more difficult by misapprehensions of §1's terms.

Accordingly, we end with the following firmly in hand. *Southwest* does much to clarify the reach of the FAA's §1 exemption, as it now assumes the role of primary touchstone in this realm. Yet while *Southwest's* lucidity is beyond peradventure, the Supreme Court based its judgment upon a fairly precise set of circumstances, leaving related questions open for another day. Therefore, while we are likely assured of future FAA §1 controversies, we confidently anticipate that they shall be shaped by *Southwest's* wisdom.

Renew your subscription by phone!

Call the New York Law Journal

at 1-877-256-2472.