Arbitration in the Fifth – October 2021

November 11, 2021 Odean Volker

PRACTICES International Arbitration, Litigation

October 2021 saw the courts within the Fifth Circuit addressing a usual mix of issues mostly arising in the employment context. Among those decisions is the Northern Districts of Texas' Mason v. Big Star Transit LLC, which considers whether a rideshare driver came within the so-called "transportation workers exclusion." In Mason, the answer was no. An appeal has already been filed.

Opinions of the Fifth Circuit

Neptune Shipmanagement Servs. PTE, Ltd. v. Dahiya, 20-30776, 2021 WL 4486397 (5th Cir. Oct. 1, 2021) (maritime personal injury). The remand of pre-arbitration case did not divest court of jurisdiction in a separate matter seeking confirmation of an award. Remand order in an earlier case was not controlling in a new case for which federal jurisdiction existed. A prior state court ruling on existence of the arbitration agreement was given preclusive effect.

Sanchez v. Marathon Oil Co., 21-20223, 2021 WL 4995483 (5th Cir. Oct. 27, 2021) (per curiam). Appeal dismissed. Order administratively closing a case is insufficient to confer appellate jurisdiction. If a party wishes to appeal an order requiring arbitration before a final disposition, the proper mechanism is an application for a writ of mandamus.

Opinions of United States District Courts

Motions to Compel Arbitration

Priebe v. Advanced Structural Tech, Inc., CV 21-1274-WBV-DMD, 2021 WL 4893614 (E.D. La. Oct. 20, 2021) (employment). Motion to compel granted. The Federal Arbitration Act preempts Louisiana Revised Statute 23:921(A)(2) (in part: "The provisions of every employment contract . . ., by which any . . . employer . . . includes a choice of forum clause or choice of law clause in an employee's contract of employment . . . shall be null and void . . .").

Mason v. Big Star Transit LLC, 3:20-CV-03566-M, 2021 WL 4948214 (N.D. Tex. Sept. 28, 2021) (notice of appeal filed) (FLSA). Motion to compel granted. Rideshare driver was not a transportation worker engaging in interstate commerce. The "scarcity of interstate trips in Plaintiff's riding record seems to show that interstate travel was not intrinsic to her job as a rideshare worker, and is not intrinsic to rideshare drivers as a class." Therefore, the transportation worker exclusion in 9 U.S.C. § 1 did not apply.

Mahasivam v. Am. Gen. Life Ins. Co., 3:20-CV-386, 2021 WL 4666628 (S.D. Tex. Oct. 7, 2021) (employment). Motion to compel granted. Questions of contract formation and existence are for the court to decide. If plaintiff had a reasonable doubt about the arbitration agreement in the employment application, the plain text of the offer letter showed that she was subject to compulsory arbitration. When plaintiff accepted employment by signing and returning the offer letter, she objectively manifested assent to the express conditions of employment, including the arbitration agreement described in the letter.

Texas Star Nut & Food Co. v. Barrington Packaging Sys Grp., Inc., 521CV00444JKPRBF, 2021 WL 4923317 (W.D. Tex. Oct. 21, 2021) (Farrer, Mag. J.) (equipment purchase). Motion to compel granted. A signed proposal, containing an arbitration clause, was a valid contract containing the material and essential terms for contract formation. Unenforceability due to fraud centers on the agreement as a whole. Such arguments are reserved for the arbitrator to decide and so present no impediment to compelling arbitration.

Motions to Confirm or Vacate

Amberson v. McAllen, AP 20-05046-CAG, 2021 WL 4760387 (W.D. Tex. Sept. 29, 2021) (legal services). Bankruptcy court's order confirming award affirmed on appeal.

Other Arbitration-Related Issues

Collins v. Nat'l Football League, 4:21-CV-792, 2021 WL 4743078 (E.D. Tex. Oct. 12, 2021) (collective bargaining agreement). Injunction denied. National Football League player sought to enjoin an arbitration award arising from a dispute concerning a collective bargaining agreement ("CBA"). The Labor Management Relations Act ("LMRA") applies to disputes concerning CBAs, but the Federal Arbitration Act may be looked to for guidance. The LMRA does not contain any statutory reasons for vacating an award. Courts in the Fifth Circuit have recognized that an LMRA award may be vacated only where an arbitrator exceeds the arbitrator's authority and fashions his or her own brand of industrial justice. An arbitrator does not exceed his or her authority so long as the decision draws its essence from the contract.

Opinions of United States Bankruptcy Courts

In re: McCollum, Debtor. McCollum v. Donald Norris & Assoc, PLLC, 19-15087-JDW, 2021 WL 4888327 (Bankr. N.D. Miss. Oct. 19, 2021) (debt relief services). Motion to compel granted in part and denied in part. Claims that did not derive from the Bankruptcy Code were compelled to arbitration. These claims existed outside of bankruptcy and were tangential to the bankruptcy case. Arbitration of those claims would not conflict with the purposes of the Bankruptcy Code. Core claims were not compelled to arbitration.