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## NJ Delivery Driver Scores Transpo Worker Exempt Status

By **Linda Chiem**

Law360 (June 5, 2019, 8:03 PM EDT) -- A New Jersey state appeals court said Wednesday that a delivery driver can pursue his wage and hour claims against Health Express Corp. in court because he qualifies as a transportation worker exempt from the Federal Arbitration Act following the U.S. Supreme Court's *New Prime* ruling in January.

A three-judge panel of New Jersey's Appellate Division said that plaintiff Essam Arafa's contract with Health Express Corp. qualified as a "contract of employment" that's covered by the Federal Arbitration Act's Section 1, which exempts from arbitration "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

The U.S. Supreme Court's **January ruling** in *New Prime v. Oliveira* clarified that the FAA's Section 1 exemption applies to transportation workers regardless of whether they're employees or independent contractors. As such, the New Jersey panel ruled Wednesday that Arafa's suit alleging Health Express misclassified him as an independent contractor instead of an employee and shorted him on pay could play out in court, instead of being bumped into arbitration, despite Arafa having signed an arbitration agreement with the company.

A trial court judge in December 2017 dismissed and sent the dispute to arbitration because Arafa's contract with Health Express contained an arbitration provision stating "this agreement is governed by the Federal Arbitration Act." But in light of *New Prime*, the appeals panel reversed that decision and remanded the case.

"Consequently, the FAA cannot govern the arbitration agreement, as contemplated by the parties," the panel said in Wednesday's per curiam decision. "The inapplicability of the FAA to the parties' arbitration agreement undermines the entire premise of their contract. Because the FAA cannot apply to the arbitration, as required by the parties, their arbitration agreement is unenforceable for lack of mutual assent."

The decision comes just a day after another New Jersey Appellate Division panel reached the opposite conclusion in a separate case dealing with similar claims, establishing murkiness within the state appeals court on the issue of the FAA's Section 1 exemption and the applicability of the New Jersey Arbitration Act, the state statute favoring arbitration.

In **Tuesday's decision** involving delivery drivers suing freight broker Strategic Delivery Solutions LLC for wage and hour violations, a separate appeals panel concluded that the drivers would still have to arbitrate their claims under state law even if they're found by the trial court on remand to fit the FAA's transportation worker exemption.

The Strategic Delivery drivers also had a contract stating that they'd be bound by the FAA, but the appeals panel went further and said the NJAA could apply to their dispute even though the statute wasn't mentioned anywhere in their contract.

The panel that took up Arafa's case did not invoke or mention the NJAA in its decision Wednesday. Arafa first sued Health Express in 2017 alleging the company violated the New Jersey Wage and Hour Law and the New Jersey Wage Payment Law by failing to pay him for all the hours he worked and by withholding money from him.

Ravi Sattiraju of The Sattiraju Law Firm PC, an attorney for Arafa who also represents the drivers in the Strategic Delivery case, told Law360 on Wednesday that they're reviewing their options following the Appellate Division's recent decisions.

Counsel for Health Express were not immediately available for comment Wednesday.

Appellate Division Judges Carmen Messano, Douglas M. Fasciale and Lisa Rose sat on the panel.

Arafa is represented by Ravi Sattiraju and Anthony S. Almeida of The Sattiraju Law Firm PC.

Health Express Corp. is represented by Michael T. Grosso and Dylan C. Dindial of Littler Mendelson PC.

The case is *Essam Arafa v. Health Express Corp.*, case number A-1862-17T3, in the Superior Court of New Jersey, Appellate Division.

--Editing by Daniel King.

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