

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-11790
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
September 16, 2004
THOMAS K. KAHN
CLERK

D. C. Docket No. 03-01698-CV-CAP-1

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION,
INC.,

Plaintiff-Appellee,

LELAND WILKINS, et al.,

Plaintiffs,

versus

ALLIED HOLDINGS, INC.,
ALLIED AUTOMOTIVE GROUP, INC.,
ALLIED SYSTEMS, LTD.,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

(September 16, 2004)

Before BIRCH, DUBINA and PRYOR, Circuit Judges.

PER CURIAM:

Allied Holdings, Inc., Allied Automotive Group, Inc., and Allied Systems, Ltd. (collectively Allied) appeal the denial of a motion to compel arbitration. Because the arbitration agreement Allied seeks to enforce is part of a collective bargaining agreement that does not clearly and unmistakably waive the right to seek judicial enforcement of a federal law and, alternatively, the contracts between Allied and the plaintiffs are exempt from the Federal Arbitration Act, we affirm.

I. BACKGROUND

Leland Wilkins and Donald Pardee are owner-operators of long-haul trucks. Allied transports cars throughout North America. Many of the trucks on which Allied ships its cars are owned by Allied and operated by drivers employed directly by Allied. Allied employs both those full-time drivers and independent truckers like Wilkins and Pardee, called owner-operators, who sign contracts (Equipment Leases) to drive their own equipment on jobs for Allied. The Owner-Operator Independent Drivers Association is the trade association of the independent truckers. We refer to Wilkins, Pardee, and the Owner-Operator Independent Drivers Association collectively as “the Drivers.”

The Equipment Leases signed by Wilkins and Pardee incorporate the

collective bargaining agreement (CBA) between Allied and the International Brotherhood of Teamsters. The CBA contains the following grievance provision: “The parties agree that all grievances and questions of interpretation arising from the provisions of this Agreement shall be submitted to the grievance procedure for determination.” Those procedures require binding arbitration to resolve disputes. The CBA further states that “[u]nless otherwise expressly provided in this Agreement, any and all disputes, including interpretations of contract provisions arising under, out of, in connection with, or in relation to” the CBA must be submitted to the grievance procedure.

On June 18, 2003, the Drivers sued Allied and alleged that Allied violated several provisions of the Truth-in-Leasing regulations (Leasing Regulations). 49 C.F.R. part 376. Allied filed a motion to dismiss and a motion to compel arbitration and argued that, because the Equipment Leases incorporated the grievance procedure from the CBA, the Drivers’ dispute with Allied must be arbitrated. The district court denied both motions, and Allied filed this appeal.

II. STANDARD OF REVIEW

We review de novo the denial of a motion to compel arbitration. Musnick v. King Motor Co. of Fort Lauderdale, 325 F.3d 1255, 1257 (11th Cir. 2003).

III. DISCUSSION

Allied argues that this dispute must be arbitrated for either of two reasons. Allied first contends that the Drivers failed to exhaust their remedies under the CBA, which requires arbitration. The Drivers respond, as the district court found, that the CBA does not contain a clear and unmistakable waiver of a right to judicial enforcement of federal law. Allied alternatively argues that the arbitration agreements in the Equipment Leases are valid under the Federal Arbitration Act (FAA). The Drivers respond, again as the district court found, that the agreements are exempt from the FAA. We address each of these arguments in turn.

A. The CBA Does Not Require Arbitration of Federal Statutory Claims

Ordinarily, labor disputes are subject to arbitration when those disputes are addressed in an agreement to arbitrate as part of a collective bargaining agreement, “[f]or arbitration of labor disputes under collective bargaining agreements is part and parcel of the collective bargaining process itself.” United Steelworkers of Am. v. Warrior & Gulf Nav. Co., 363 U.S. 574, 578, 80 S. Ct. 1347, 1351 (1960); see also United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593, 80 S. Ct. 1358 (1960); United Steelworkers of Am. v. Am. Mfg. Co., 363 U.S. 564, 80 S. Ct. 1343 (1960). The Supreme Court has said that “there is a presumption of arbitrability in the sense that ‘[a]n order to arbitrate the particular grievance should

not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.”

AT&T Tech., Inc. v. Communications Workers of Am., 475 U.S. 643, 650, 106 S. Ct. 1415, 1419 (1986) (quoting Warrior & Gulf, 363 U.S. at 582-583, 80 S. Ct. at 1352-53). That presumption, however, is subject to a rule of clear statement regarding the right to obtain judicial relief under a federal law.

The Supreme Court has explained that “a union-negotiated waiver of employees’ statutory right to a judicial forum for claims of employment discrimination” must be “clear and unmistakable.” Wright v. Univ. Mar. Serv. Corp., 525 U.S. 70, 80, 119 S. Ct. 391, 396 (1998). The presumption of arbitrability “does not extend beyond the reach of the principal rationale that justifies it, which is that arbitrators are in a better position than courts to interpret the terms of a CBA.” Id. at 78, 119 S. Ct. at 395. The Wright Court held, for example, that a requirement of arbitration for “all matters affecting wages, hours, and other terms and conditions of employment” did not require the arbitration of claims under the Americans with Disabilities Act. Id. at 80-81, 119 S. Ct. at 396-97. The agreement was not a clear waiver of a right to relief under that federal statute.

Like the agreement in Wright, the CBA provides that “[a]ny disputes arising

out of the interpretation, performance or application of” the agreement are subject to arbitration. The CBA, however, does not contain a clear and unmistakable waiver of a right to seek judicial relief under a federal law. The CBA, therefore, does not require arbitration of this dispute.

*B. The Lease Agreements Between the Drivers & Allied
Do Not Require Arbitration Under the FAA*

Allied argues, in the alternative, that its dispute with the Drivers is subject to arbitration under the Equipment Leases and the FAA. The Supreme Court has stated that “Congress enacted the FAA in 1925 ... [a]s ... a response to hostility of American courts to the enforcement of arbitration agreements, a judicial disposition inherited from then-longstanding English practice. ... To give effect to this purpose, the FAA compels judicial enforcement of a wide range of written arbitration agreements.” Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 111, 121 S. Ct. 1302, 1307 (2001) (internal citations omitted). Under section 2 of the FAA, a “written provision ... in a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such conduct ... shall be valid, irrevocable, and enforceable” 9 U.S.C. § 2. A narrow category of employment contracts, however, are exempt from arbitration.

Section 1 of the FAA states that “nothing [in the FAA] shall apply to contracts of employment of seamen, railroad employees, or any other class of

workers engaged in ... interstate commerce.” 9 U.S.C. § 1. In Circuit City, the Supreme Court ruled that this section exempts from arbitration “only contracts of employment of transportation workers.” 532 U.S. at 119, 121 S. Ct. at 1311. The question then is whether the Drivers’ Equipment Leases fall within this exception.

Although Allied concedes that the Drivers are employees and are engaged in the transportation of goods in interstate commerce, Allied erroneously argues that the only potential employment contract between Allied and the Drivers is the CBA. The reasoning Allied employs is circular. Allied has two distinct types of drivers: those it directly employs and the owner-operators, who are employed under their individual Equipment Leases. The Equipment Leases incorporate the CBA by reference, but the CBA, as explained earlier, does not contain a clear waiver of the Drivers’ right to seek judicial enforcement of a federal law.

Insofar as Allied relies upon them independently, the terms of the Equipment Leases evidence that they are contracts of employment, not rental agreements that govern only the Drivers’ equipment. Wilkins’s contract with Allied covers his compensation for “the use, operation, loading, and unloading” of his truck. Pardee’s contract with Allied states that his truck “shall be operated by [Pardee], who will be employed by [Allied] as an employee.” The Equipment Leases, therefore, are exempt from arbitration under 9 U.S.C. section 1 as contracts

of employment of transportation workers engaged in interstate commerce.

IV. CONCLUSION

Allied cannot have it both ways. To the extent that Allied seeks arbitration under the CBA, its motion fails because the CBA does not clearly and unmistakably waive a right to obtain judicial enforcement of a federal law. To the extent that Allied relies on the Equipment Leases, its motion fails because the Equipment Leases are contracts of employment of transportation workers, which are exempt from the FAA. The denial of the motion to compel arbitration, therefore, is

AFFIRMED.