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November 2011

Federal District Court Holds Motor Carriers Are Not Subject to California's Meal and Rest Break Laws

By Michael Gregg

A federal district court in California recently issued a decision, in *Dilts v. Penske Logistics, LLC,* 2011 U.S. Dist. LEXIS 122421 (S.D. Cal. Oct. 19, 2011), holding that motor carriers that transport property are not subject to California's meal and rest break laws because such laws are preempted by the Federal Aviation Administration Authorization Act (FAAA Act).

Factual Background

The plaintiffs in *Penske Logistics*, appliance delivery drivers and installers, filed a class action against their employer for failing to provide meal and rest breaks in addition to other wage and hour claims.

The plaintiffs claimed that the defendants violated California's meal and rest break laws by maintaining a systematic policy of automatically deducting 30 minutes of work time from the employees' hours for meal breaks, irrespective of whether duty-free meal breaks were provided, failing to account for meal breaks when scheduling deliveries/installations, not permitting drivers/installers to leave their vehicles unattended, not allowing the drivers/installers to turn off their communication devices during breaks, and not requiring them to use the communication devices to notify the company of meal and rest breaks. The defendants moved for summary judgment on the basis that the plaintiffs' meal and rest break claims are preempted by the FAAA Act.

Background on the Federal Aviation Administration Authorization Act

In 1980, Congress deregulated the trucking industry by enacting the Motor Carrier Act. In 1994, it sought to preempt state trucking regulations by enacting the FAAA Act. The Act preempts a wide range of state regulation of intrastate trucking, providing that a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). Congress believed it was necessary to eliminate non-uniform state regulations that had curtailed the expansion of markets and resulted in inefficiencies, increased costs, reduced competition, and inhibition of innovation and technology. *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1187 (9th Cir. 1998).

The FAAA Act borrowed language from the Airline Deregulation Act (ADA). In passing the ADA, Congress believed that deregulating the airline industry would result in lower fares and better service. To prevent states from undoing federal deregulation with regulations of their own, the ADA prohibits states from enacting or enforcing any law "relating to rates, routes, or services of any air carrier." *Rowe v. New Hampshire Motor Transp. Assn.*, 552 U.S. 364, 367 (2008). By enacting a preemption provision identical to the ADA, Congress also sought to level the playing field between air carriers and motor carriers. Because the FAAA Act borrowed language from the ADA, courts construe the statutes in a like manner and cite to decisions interpreting the two Acts interchangeably.

The FAAA Act preempts state laws and regulations that have a direct or indirect "connection with, or reference to" motor carriers' price, route or service. General statutes applicable to all businesses are not immune from preemption. *Nat'l Fed'n of the Blind v. United Airlines, Inc.*, 2011 U.S. Dist. LEXIS 44366 (N.D. Cal. Apr. 25, 2011) (holding that the ADA preempts disability claim regarding lack of airport kiosks for the blind). In Rowe, the U.S. Supreme Court found that a law requiring retailers to use motor carriers that provide an age verification service for tobacco shipments was preempted by the FAAA Act. In *DiFiore v. American Airlines, Inc.*, 646 F.3d 81 (1st Cir. 2011), the U.S. Court of Appeals for the First Circuit ruled that Massachusetts's tip statute is preempted by the ADA with respect to skycaps. In contrast, as the Supreme Court held in *Rowe*, laws that affect the price, route and service of motor carriers in only a "tenuous, remote or peripheral" manner are not preempted.

Courts have interpreted the term "service" under the FAAA Act expansively to further Congress's goal that transportation rates, routes and services reflect "maximum reliance on competitive market forces." In *Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1265-66 (9th Cir. 1998), the Ninth Circuit said "service," as used in the ADA, refers "to such things as the frequency and scheduling of transportation, and to the selection of markets to or from which transportation is provided." In *Rowe*, the Supreme Court took a more expansive view of the term "service" when it held that state law aimed at tobacco retailers—requiring that such retailers use a delivery service that provided a recipient verification ensuring that tobacco was not being delivered to minors—was preempted by the FAAA Act. The Court said the law related to motor carrier "service" because it required carriers to offer services different from those that the market might dictate.

The Court's Holding

In *Penske Logistics*, the plaintiffs' primary duties included loading appliances from warehouses onto trucks, transporting those appliances to other locations within California, and installing them.

The plaintiffs argued that the FAAA Act did not apply to the employer's practices because the employees operated solely within California. The court rejected the plaintiffs' argument and held that Congress did in fact intend that the FAAA Act preempt intrastate transportation to avoid unreasonable burden on interstate commerce.

The plaintiffs also argued that the company was not a "motor carrier" because the driving and delivery service was incidental to the installation of appliances. Noting that the term "motor carrier" is defined broadly to mean "a person providing commercial motor vehicle . . . transportation for compensation," the court concluded that the company was a "motor carrier" under the FAAA Act, even though drivers/installers performed installation services in addition to transporting property.

The court held that the FAAA Act preempted the plaintiffs' meal and rest break claims and explained that the proper inquiry is "whether the [meal and rest break law], directly or indirectly, 'binds the . . . carrier to a particular price, route or service and thereby interferes with competitive market forces within the . . . industry.'" The court found that California's meal and rest break laws are related to "routes" because they deprive drivers of the "ability to take any route that does not offer adequate locations for stopping, or by forcing them to take shorter or fewer routes." The court also held that the meal and rest break laws impacted the company's "services" because the state-mandated length and timing of the meal and rest breaks impacted the "frequency and scheduling of transportation." The court also explained that California's meal and rest break laws impacted the company's prices because of the increased cost of additional drivers, helpers, tractors, and trailers that would be needed to ensure off-duty breaks under California law. The court refused to "allow California to insist exactly when and for exactly how long carriers provide breaks for their employees," because to do so "would allow other States to do the same, and to do so differently."

The court rejected the plaintiffs' argument that the meal and rest break laws are simply wage laws analogous to paying minimum wage. The court found that the meal and rest break laws are different because they mandate that certain off-duty events occur over the course of a driver's day.

The court also rejected the plaintiffs' argument that the general public health concerns underlying California's meal and rest break laws brought them within the safety exception to the FAAA Act's preemptive scope.

Significance for Employers

It is unclear whether the plaintiffs in Penske Logistics will appeal the decision to the Ninth Circuit. If they do, *Blackwell v. Skywest Airlines, Inc.*, 2008 U.S. Dist. LEXIS 97955 (S.D. Cal. Dec. 3, 2008), appears to support the employer's position. In *Blackwell*, a California federal district court held that California's meal and rest break laws are preempted by the ADA with respect to airline employees responsible for, among other things, marshaling flights into boarding gates, inspecting and documenting damages to aircrafts, and coordinating activity between air traffic control, aircrafts and airline agents. The court in Blackwell held that California's meal and rest break laws related to air carrier "service" because requiring the airline to provide meal and rest breaks "could result in cascading flight delays, increased risk of death or serious injury to passengers and damage to aircraft, and security breaches [as well as the fact that] . . . the interruption of Agent activities to accommodate state rest and meal break periods could significantly and impermissibly impact point-to-point air carrier service."

If the decision in *Penske Logistics* stands, it may relieve motor carriers transporting property from compliance with California's meal and rest break laws and result in increased efficiencies and significant cost reduction. Companies that transport property should re-examine their meal and rest break practices to assess the impact of this case on their operations.

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