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Dispute Deemed Minor under the Railway Labor Act, Sent To Arbitration
Flight Options, LLC and Flexjet LLC v. International Brotherhood of Teamsters
2017 WL 4583014
United States Court of Appeals, Sixth Circuit

The International Brotherhood of Teamsters (Pilots' Union) brought an action against merging airlines Flight Options and Flexjet, seeking a preliminary injunction that ordered the airlines to bargain in good faith over the union's proposed changes to pilots' rates of pay and working conditions, pursuant to Section 6 of the Railway Labor Act (RLA). The court granted the injunction and the airlines appealed.

The United States Court of Appeals for the Sixth Circuit vacated and remanded. At issue in the appeal was whether negotiation over modification of the collective bargaining agreement (CBA) to integrate the merged pilots under CBA Section 1.5(c)(4) was required before negotiation over the union's broad changes to the terms and conditions of employment under Section 6 of the Railway Labor Act (RLA). Airlines and unions must resolve their disputes consistent with the RLA, which has two procedural tracks: major or minor. Parties to major disputes, which relate to the formation of the CBA or efforts to change the terms of the CBA, must first try to resolve the issues through private negotiation and, if necessary, mediation. If both fail, then the parties must determine whether to go to arbitration. Parties to minor disputes, which relate to disagreements about how a CBA applies to a situation, must attempt to negotiate privately and if that fails, must proceed directly to binding arbitration.

The lower court assumed the dispute was major because it involved parties' obligations under Section 6; however, the proper inquiry is whether the existing CBA controls the controversy. The Court found that under the CBA, the parties had a right to prioritize Section 1.5(c)(4) negotiations and the airlines did not have to bargain over Section 6 proposals including all pilots of the combined airlines until such time as a fully merged agreement is reached. The dispute was minor, with the question of how the CBA applied to be determined in arbitration.

Uber Can't Compel Non-Signatory to Arbitrate
Waymo LLC v. Uber Technologies Inc., et al
2017 WL 4018404
United States Court of Appeals, Federal Circuit

Waymo brought an action against Uber, alleging trade secret misappropriation and unfair competition. Uber did not have an arbitration agreement with Waymo, but moved to compel arbitration based on the arbitration agreement between Waymo and former employee and Intervenor, Anthony Levandowski. The court denied the motion to compel and Uber appealed.

The United States Court of Appeals for the Federal Circuit affirmed. Uber argued that equitable estoppel applied to compel arbitration because Waymo contended that the misappropriated information used by Uber was acquired by Levandowski when he was employed by Waymo. The Court applied Kramer, which provides that equitable estoppel applied in two circumstances: 1) when a signatory relies on the terms of the written agreement in asserting its claims against the non-signatory or the claims are intimately founded in and intertwined with the underlying contract; and 2) when the signatory alleges substantially interdependent and concerted misconduct by the non-signatory and another signatory and the allegations of interdependent misconduct are founded in or intimately connected with the obligations of the underlying agreement. On the first prong, Waymo did not rely on its employment agreement with Levandowski as the foundation of its claim. The Court rejected Uber's argument that the "or" in the language created a separate standard such that Uber need not show that Waymo relied on the employment agreements, referencing California law that defined reliance on an agreement as raising claims that are intimately founded in or intertwined with that agreement. The Court similarly rejected Uber's argument that Waymo had to rely on its agreements with Levandowski to make out its trade secret claims since reference to the agreements did not constitute reliance. Uber's final argument that the lower court erred in relying on Waymo's disclaimer of reliance "so long as Uber did not open the door" did not change the Court's analysis. On the second prong, Waymo did not argue that Uber conspired with Levandowski to breach the agreement.

No Unconscionability or Lack of Mutuality with Arbitration Agreement
Larsen v. Citibank/Keybank National Association
2017 WL 4250074
United States Court of Appeals, Eleventh Circuit

Johnson filed a putative class action, alleging that Keybank manipulated debit card transactions to maximize fees. Keybank moved to compel arbitration. After two remands, the court denied Keybank's motion to compel arbitration on the grounds of unconscionability and Keybank appealed.

The United States Court of Appeals for the Eleventh Circuit reversed and remanded the case to the district court with instructions to compel arbitration. The threshold issue was whether there was an agreement to arbitrate between Johnson and Keybank. Johnson opened his account with Keybank in 1991 and converted it to a joint account with his wife in 2001, signing a Signature Card that confirmed the account was subject to the bank's 1997 Deposit Account Agreement. The 1997 Agreement included an arbitration provision and a provision that allowed for unilateral changes to the agreement with appropriate notice. The arbitration provision was updated in 2009. Johnson claimed the 1991 agreement, without an arbitration provision, applied to this matter. The Court found no genuine dispute of material fact that when Johnson signed the 2001 signature card, he agreed to be bound by the '97 agreement (since updated), including the arbitration agreement.

Johnson argued that the 2009 agreement was unconscionable and illusory. The Court found no procedural unconscionability: Johnson had the chance to review the '97 agreement, which clearly referenced arbitration and waiver of a jury trial, and amendments to the agreement were bold and clear, and included an opt-out. The Court found no substantive unconscionability: arbitration costs were not prohibitive, since Johnson could choose an arbitral forum that had a favorable cost-allocation framework; the attorneys' fees clause provided no evidence that Keybank could recover attorneys' fees from Johnson; while the 2009 agreement clause limiting discovery was one-sided, nothing in the record suggested that an arbitrator applying AAA or JAMS rules would be empowered in a manner to render the provision unconscionable; and Keybank's ability to change the terms of the agreement required appropriate notice and the implied duty of good faith. Though the Court found substantive unconscionability with the clause to "keep confidential any decision of an arbitrator" because it created an informational advantage for Keybank that could discourage consumers from pursuing valid claims, the clause could be easily severed from the remainder of the agreement.

On Johnson's argument that the change in terms rendered the 2009 Arbitration Provision illusory and unenforceable, the Court considered whether the contract "lacked consideration and mutuality of obligation" and found it did not. Keybank was required to provide consumers with notice prior to any amendments, and had a corresponding duty of good faith and fairness to the affected consumers.