

Hot Recent Cases in Motor Carrier Law

by *Steve Block* January 2004

Owner operators must unload their trucks if their leases say so *Jessep v. Jacobson Transportation Co.*, 2003 WL 22844291 (8th Cir. 2003)

This one answers an age-old question often raised by owner operators who don't feel like unloading their trucks. A federal statute, 49 USC § 14103(b), says a carrier can't "coerce" anyone to load or unload cargo. When driver Jessep didn't want to get his hands dirty, his lessee, carrier Jacobson, bumped him to the bottom of the dispatch list. Jessep sued the carrier, pointing to the statute.

Notwithstanding Uncle Sam's statutory default proviso, nothing says an owner operator can't contractually agree to unload and load. That's what Jessep's lease provided. In a very short opinion, the Eight Circuit ruled the contract trumps the statute, and Jessep must empty his truck or go to the back of the line.

Agency law in the Carmack context: Apparent authority is enough to keep a player in the liability loop *Parramore v. Tru-Pak Moving Systems*, 286 F.Supp.2d 643 (M.D. NC 2003)

This interstate household goods case tackles a number of issues, such as the usual federal preemption and notice of claim squabbles. On a summary judgment motion brought in the Middle District of North Carolina, the court found questions of fact as to whether notice of claim had been sent (the court paid lip service to the absence of a Fourth Circuit decision defining adequate notice of claim). Whether carrier Tru-Pak might have waived its right to notice by suggesting settlement was imminent also was factually disputed. State and common law causes of action for negligence and breach of contract were dismissed based on Carmack's preemption.

The interesting point this case addresses regards the law of agency. Tru-Pak had an agency agreement with carrier Atlas to operate as a local. The bill of lading and shipping documentation all had Atlas' logo and listed Atlas as the carrier. The rub came from the prohibition of interstate carriage in the Atlas-Tru-Pak contract. Tru-Pak had specifically directed its driver to disregard that restriction in hauling shipper Parramore's stuff from the Tar Heel State to Michigan. Of course, some of Parramore's belongings were damaged and missing on arrival.

Atlas wanted out of the mess based on the contract term. Atlas urged that Tru-Pak was engaged in an ultra vires mission when it made this haul, one Atlas shouldn't be held accountable for as a principal. Conversely, Tru-Pak sought a dismissal based on 49 USC § 13907(a), which holds principals solely liable for the acts of their disclosed agents. The court disagreed with both, at least on summary judgment. At a minimum, Tru-Pak had

apparent authority to effect the move as Atlas's agent, so Parramore was entitled to rely on Atlas being on the hook. An ultra vires act is one undertaken with the "complete absence of authority," which wasn't the case here. Tru-Pak couldn't escape liability under 49 USC § 13907(a) because Parramore alleged that the local carrier had committed its own unauthorized acts leading to the loss.

A misfiled insurance certificate doesn't create coverage
***Campbell v. Shura, et al*, 2003 WL 22508439 (5th Cir. 2003)**

Here's a rare victory for the insurance industry in the motor carrier coverage arena. Truck owner Owens leased his rig to carrier Fikes. Fikes got insurance coverage from insurer Lancer, and filed a certificate of insurance with the Texas Department of Transportation. The lease was completed, and the rig was returned to Owens. However, Fikes and Lancer forgot to cancel their certificate in the Lone Star State.

Owens then leased his truck to carrier Parks for use in Louisiana. Tragically, a Parks driver was involved in a fatal collision. The deceased's estate wanted Lancer to provide coverage. The claimant pointed to Texas, Louisiana and federal law that interprets and enforces strictly regs regarding confirmation of motor carrier insurance.

This time, however, a federal court found no coverage. The Fifth Circuit, affirming the Western District of Louisiana, ruled that a certificate filed with the government may not "amplify, extend or modify" the terms of Lancer's policy, which pertained only to the Fikes lease. Moreover, "it is the existence of the insurance which protects the public, not filing it with the" government. Thus, the deceased's arguments regarding public policy were rejected.

It's interesting to consider how this might play out in a federal coverage issue involving the FMCSA, whose insurance division takes a pretty hard line on these topics. Maybe Owens should have seen to it that the certificate was canceled to avoid this problem.

. . . And while were on the topic of agency in the trucking world. . .
***Shinn v. Greeness, et al*, 218 F.R.D. 478 (M.D. NC 2003)**

Greeness was driving a rig in North Carolina when he crashed into plaintiff Shinn's car. Greeness was operating under the authority of Anna Beck d/b/a Zippway Transport, and his rig was owned by R&E Townsend Trucking, Inc. Roger Townsend and Ella Townsend were R&E's executive officers. Greeness and Beck were Texas citizens, and the Townsends were from Georgia.

Shinn sued Greeness in North Carolina, and wanted to amend his complaint to name Beck and the Townsends as defendants. All resisted based on jurisdictional grounds.

When addressing whether a complaint may be amended to name new defendants, a plaintiff need only make out a *prima facie* case of jurisdiction. Thus, the court wouldn't force the plaintiff to show by a preponderance of the evidence that the out-of-towners had the requisite minimum contacts with the Tar Heel State to be hauled into court there. Instead, it was enough for Shinn to show that, hey, their truck was doing business in the Old North State.

Similarly, Shinn didn't have to show the Townsends exercised requisite control over Greeness for the driver to be considered their agent in an employment relationship. A *prima facie* case is presented by the fact he was driving their company's truck. Beck was on the hook, at least until an evidentiary hearing could be completed, because drivers are indeed statutory employees of the carriers under whose authority they operate. State law, if applicable, would provide the same way.

Because amendment to pleadings must be liberally allowed, Beck and the Townsends have to fight at least one more round in North Carolina.

**Owner operators have to arbitrate their breach of contract claims against carriers
OOIDA v. Swift Transportation, et al, 2003 WL 22300528**

A group of owner operators represented by the Owner-Operator Independent Drivers Association ("OOIDA") sued some carriers alleging breach of their contracts (the opinion doesn't say much about the beef). The carriers responded to the lawsuit, filed in the District of Arizona, by moving to enforce the contracts' arbitration clauses. The drivers resisted on a number of grounds.

Considering the federal judiciary's general preference for upholding arbitration agreements, the court ruled against the drivers. Contrary to the drivers' feelings, the carriers hadn't waived their right to arbitrate by asking that a preliminary injunction hearing take place concurrently with trial.

True, the Federal Arbitration Act contains an exception for transportation employees, but these drivers, being owner operators, weren't employees (as a matter of statute). While the drivers thought their claims arose out of activity outside the scope and contemplation of their contracts, the contracts indisputably were at the relationship's core. The disputes certainly "were in connection with" the contracts, which was the basis for the arbitration clauses' enforceability, and required interpretation of certain contractual terms. Even if a contract is ruled void as violative of federal statute, its arbitration clause is still okay.

Lastly, the restricted scope of discovery in arbitration, as well as the more limited scope of enforceability an arbitration proceeding provides, are not grounds for setting aside a clear contract term. Those are just limitations you're agreeing to when you insert an arbitration clause in the first place.

OOIDA's victory over carrier Arctic Express stands!
***OOIDA v. Arctic Express*, 2003 WL 22439878 (S.D. Ohio 2003)**

Drivers represented by OOIDA sued carrier Arctic Express under truth-in-leasing regs based on Arctic's failure to return escrow funds collected from them (the funds were held only to satisfy the drivers' maintenance obligations; apparently Arctic interpreted that term rather liberally). The drivers won on summary judgment in the Southern District of Ohio, citing 49 USC § § 14101-02 and 14704.

After winning that motion, OOIDA lost a similar battle before the Eighth Circuit, which ruled that the truth-in-leasing regs couldn't be retroactively applied. The Eighters also denied OOIDA drivers class action status.

Based on that appellate decision, Arctic asked the Southern District of Ohio to reconsider. The Ohio court declined, stating it was not bound by the Eighth Circuit's decision (Ohio is in the Sixth Circuit). Besides, both decisions were based on interpretations of U.S. Supreme Court law that were known to the district court when it first considered the issue. Regarding the motion to decertify the OOIDA class, the district court had applied the Sixth Circuit's guidelines, rendering the Eight Circuit's conclusion even less relevant. OOIDA remains the winner.