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FedEx Misclassified Drivers As Contractors, Judge Rules

By **Dan Prochilo**

Law360, New York (July 08, 2013, 10:37 PM ET) -- A Massachusetts federal judge ruled on Wednesday that a group of former FedEx Ground Package System Inc. drivers who sued the company for misclassifying them as independent contractors were in fact company employees under state law, granting the workers' motion for summary judgment.

U.S. District Judge Richard Stearns said the drivers' duties fell within the scope "of FedEx's usual course of business," and, therefore, under Massachusetts' Independent Contractor Statute, they were company employees, not outside contractors.

Shooting down FedEx's argument that the company just manages a "sophisticated information and distribution network" but doesn't directly provide delivery services — allegedly placing the deliverers' work outside of FedEx's core function — Judge Stearns said that it is "beyond cavil that the pickup and delivery drivers are essential to FedEx's business."

The 11 workers sued FedEx in June 2011, accusing the Pittsburgh-based company of categorizing them as contractors in violation of Massachusetts law and subjecting them to "improper shouldering of expenses," the complaint said.

The suit said the drivers' work constituted "the central purpose for which FedEx Ground exists — namely, the pickup and delivery of packages."

Notwithstanding their vital work and the fact that FedEx trained and supervised the deliverers and wrote the policies they had to follow, the company deemed them independent contractors and required them to purchase or lease their trucks as well as buy their own gasoline and uniforms, the suit said.

The drivers motioned for summary judgment on April 30, arguing that FedEx could not prove that the drivers met the statutory criteria to be considered contractors, noting how the workers did not perform similar services for independent third parties and the company could not demonstrate that its package delivery services were anything short of the mainstay of its business.

FedEx countered with a motion for summary judgment of its own on all the claims, saying that the state statute didn't apply because it was preempted by the 1994 Federal Aviation Administration Authorization Act, which barred states from enacting laws related to "a price, route, or service of any motor carrier ... with respect to the transportation of property."

But Judge Stearns said the Massachusetts statute was not overridden by the FAAA, citing the U.S. Supreme Court's finding that the act's scope of preemption was limited to laws that pertained to a carrier's "transportation of property," which the state independent contractor

statute didn't touch upon.

"The statute has nothing to do with the regulation of the 'carriage of property,'" the judge said. "It simply explains to businesses like FedEx who operate in the commonwealth when a worker must be paid as an employee."

The court also rejected FedEx's contention that it was in the business of logistics, or the operation of a distribution network, and that the workers performed services that were just incidental to that function.

The judge pointed out how FedEx "holds itself out to the public" on its website and in its other promotional materials as a parcel delivery service, and in its annual report, it described its purpose as "small-package pickup and delivery."

"FedEx's attempt to minimize its own characterizations of its services is unpersuasive," said Judge Stearns.

Shannon Liss-Riordan, one of the attorneys for the deliverers, said she was pleased the court recognized "that FedEx drivers are in fact employees under Massachusetts law" and that the court didn't buy the company's FAAA preemption contention.

"Defendants are using preemption arguments far too broadly, and we thought this was an important decision, recognizing that the courts are cutting back on those types of defenses particularly in the area of wage and hour law," Liss-Riordan said.

A representative for FedEx could not be immediately reached for comment on Monday.

The drivers are represented by Harold Lichten, Shannon Liss-Riordan and Sara Smolik of Lichten & Liss-Riordan P.C.

FedEx is represented by James C. Rehnquist, Caroline H. Cochenour, Nancy A. Dinsmore and Leann Walsh of Goodwin Procter LLP.

The case is Schwann, et al. v. Fedex Ground Package System Inc., case number 1:11-cv-11094, before the U.S. District Court for the District of Massachusetts.

--Editing by Jeremy Barker.

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