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## California District Court Holds that Federal Aviation Administration Authorization Act Preempts Drivers' Minimum Wage Claims

By Fraser A. McAlpine on June 6, 2014

J.B. Hunt Transportation, like many trucking companies, pays its drivers "a certain amount for every mile they drive, in addition to lump sums for every delivery they make." Consequently, "drivers are not directly compensated for certain job-related activities, including loading and unloading freight, or waiting for a customer." Relying on *Armenta v. Osmose Inc.*, 135 Cal. App. 4th 314 (2005), a number of drivers sued J.B. Hunt, claiming that they were entitled to receive the minimum wage for those periods when they were not directly compensated. As stated in the court's order, "Plaintiffs contend that Defendant's [Activity-Based-Pay ("ABP") compensation] system fails to provide at least minimum wage during portions of a driver's day, specifically, while performing certain tasks: (a) waiting in lines at intermodal terminals for periods of less than two hours; (b) performing pre- and post-trip inspections; (c) fueling vehicles; (d) waiting for dispatch to issue assignments; and (e) hooking and unhooking trailers."

J.B. Hunt responded, asserting that its "piece rate compensation system fully compensates drivers for [all] activities as part of a rate measured by the length of the routes driven," but also that Plaintiffs' claims constitute "exactly the kind of state regulatory interference in the market that Congress intended to preempt" when it enacted the Federal Aviation Administration Authorization Act ("FAAAA").

The FAAAA expressly preempt certain state laws: "[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." 549 U.S.C. § 14501(c)(1). The Ninth Circuit has interpreted this statutory language to require an inquiry whether the state law in question "directly or indirectly, 'binds the . . . carrier to a particular price, route or service and thereby interferes with competitive market forces within the . . . industry.'"

When analyzing Plaintiffs' minimum wage claims in the context of FAAAA preemption, the District Court stated: Here, California's minimum wage laws, upon which Plaintiffs' claims are based, are indeed "related to" Defendant's services themselves, as well as the price of those services. As a matter of logic and basic economic principles, if Defendant were forced to change its current ABP compensation system to include hourly pay for "non-productive" activity, its labor costs would clearly be affected, and consequently so would the prices of the services it provides. Defendant provides ample evidence to support this conclusion. But beyond mere increases to the price of Defendant's services, altering its compensation system would also result in decreased efficiency and productivity. . . . Common sense dictates that increased efficiency and productivity enables Defendant to serve more customers at lower prices.

Accordingly, the Court determined that the record demonstrated that California's minimum wage law, to the extent that it required a transportation company using piece rate compensation system to pay drivers for unproductive time, was preempted. Because many transportation companies in California use some form of piece rate or route compensation system, the judgment in favor a J.B. Hunt will attract significant attention.

Source: Gerardo Ortega, et al. v. J.B. Hunt Transport Inc., CV 07-08336 BRO (SHx), June 3, 2014

