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FEDEX GROUND PICKUP & DELIVERY DRIVERS FOUND TO BE EMPLOYEES NOT INDEPENDENT CONTRACTORS

On Monday, July 26, 2003, Judge Howard Schwab of Los Angeles Superior Court, Department F48, rendered his decision in the first phase of a bifurcated trial, after hearing nine weeks of testimony between April 16 and June 30, 2003, finding that the Plaintiffs/Class representatives Anthony Estrada and Jeffrey Morgan and those in the certified statewide class of several hundred single-route pickup and delivery drivers for Fed Ex Ground were and are employees rather than independent contractors, as FedEx Ground claims. He also found, contrary to FedEx Ground's claim, that the drivers have not been indemnified for their work-related expenses. The court also found that the one named plaintiff who had two routes was an independent contractor. A copy of the court's decision is attached.

At issue in the case, entitled Anthony Estrada v. FedEx Ground, Los Angeles Superior Court # BC 210130 is whether FedEx Ground violated California Labor Code Section 2802 and/or the California Unfair Business Practices Act by failing and refusing to reimburse the drivers for their work-related expenses, including the costs of their trucks, fuel, maintenance, scanners, uniforms, liability and workers compensation-like insurance, registration and license, and similar expenses required in order to work as pickup and delivery drivers for FedEx Ground. To be entitled to such reimbursement, the drivers were required by the Court to prove that they were employees under California law rather than independent contractors, as the company claimed.

The trial court issued a lengthy statement of decision outlining the reasons for the ruling, including the fact that the company exercised pervasive control, indeed "close to absolute actual control" (p.4) over the drivers' working conditions under the sixty-six page long form-contract that each driver had to sign. The court said that the Company had created "an environment, where a terminal manager can blasphemously refer to himself as the Almighty and wield power accordingly." (P.10) The court also found that the drivers were fully integrated into the FedEx Ground delivery system - - "essential to FEG's core business operation" (p. 16) - - where they worked for many years for FedEx and FedEx alone. He also found that, contrary to what FedEx claimed at trial, the single-route drivers had a job, not a business and had no opportunity for "profit or loss."

Plaintiff and class representative Anthony Estrada was thrilled with the Court's decision and explained "When I went to work for the Company, I had to purchase a \$40,000 truck and have it specially painted with the Company's logo and advertising. I had to wear a Company-uniform, use the Company's scanner and paperwork and was told what to do by the Company's managers every day. Despite all that, the Company claimed we were independent contractors and required us to pay for the company's truck, fuel, maintenance, insurance and other expenses. This was a scam that cost each driver thousands and thousands of dollars each year and every dollar we drivers paid was a dollar the Company saved by not paying its own expenses. The Court has now decided what we all knew in our hearts - - we were always employees, but we were forced to pay the company's expenses anyway."

Class counsel Lynn Rossman Faris said, "The Court's landmark decision finally rights a long-standing wrong - - by mis-classifying their delivery drivers, FedEx Ground has forced its delivery drivers to pay the company's business expenses. While only directly applicable to California's single-route pickup and delivery drivers, the decision will have major impact around the country, where other class action cases are pending or contemplated. FedEx Ground is a multi-billion dollar company which has between 5,000 and 6,000 single-route pickup and delivery drivers it has mis-classified as independent contractors when they are clearly employees. FedEx Ground's sister company, FedEx Express has thousands of drivers who perform the same duties and are provided with a truck, fuel, insurance, uniforms and the like by the Company. There is simply no excuse for the unfair treatment of the FedEx Ground drivers who look like employees, act like employees and are treated by FedEx Ground like employees but are made to pay for the company's business expenses. This decision should serve as a warning to other major employers who use sham independent contractor arrangements for their own financial benefit - - calling them independent contractors, but treating them as employees to avoid paying their costs of doing business."

In 1998, FedEx purchased RPS, Inc., a company based in Pittsburg, Pennsylvania, which opened its doors in 1985 in an effort to capture a share of the small package ground delivery market, classifying its pick-up and delivery drivers as "independent contractors" to avoid purchase of thousands of expensive trucks. When FedEx acquired RPS, Inc., it continued classifying the pick-up and delivery drivers as independent contractors on a national basis, even though FedEx Express, Inc., based in Memphis, Tennessee, has always classified its couriers as employees. In 2000, FedEx re-branded RPS, Inc. and since then has marketed its ground delivery service as FedEx Ground. FedEx Ground packages are transported between ground based hubs by tractor trailer, while FedEx Express transports packages by air. Otherwise, delivery functions of the FedEx Ground drivers and the FedEx Express couriers are the same.

The case will continue on to Phase II, when the court must still decide various pending issues, including what damages and/or restitution the class is entitled to and whether to issue injunctive and declaratory relief requested by the Plaintiffs.

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