

Ninth Circuit Revives Airport Van Drivers' California Law Employment Claims Against SuperShuttle in Class Action

Court of Appeals Reverses Lower Court's Holding That Adjudication of Van Drivers' State Law Claims Would Interfere with Jurisdiction of the California Public Utilities Commission

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November 3, 2011 – In a victory for drivers of airport shuttle vans throughout the state, the Ninth Circuit Court of Appeals today reversed a lower court holding dismissing California employment law claims brought by a class of van drivers against SuperShuttle based on the company's unlawful misclassification of the drivers as independent contractors.

The plaintiff van drivers originally brought their claims in Alameda County Superior Court in May 2008, alleging that by misclassifying them as independent contractors despite exercising control over the minute details of every aspect of their behavior and appearance, SuperShuttle unlawfully deprived the drivers of the full protections provided to employees under California law, including overtime and minimum wages, reimbursement of business expenses and deductions wrongfully taken from wages, and meal period pay. After SuperShuttle removed the case to federal court, the van drivers added federal claims under the Fair Labor Standards Act. In December 2009, Judge Jeffery White of the Northern District of California dismissed the van drivers' California law claims, holding that the court lacked subject matter jurisdiction, because under California law allowing the claims to proceed in court would impermissibly interfere with the regulatory authority of the California Public Utilities Commission ("PUC"), which regulates airport shuttle drivers.

Altshuler Berzon joined the case for the appeal, helping the van drivers successfully seek interlocutory review of the ruling, and then briefing and arguing the case before the Ninth Circuit. The drivers' federal claims remained on hold pending resolution of the appeal.

In a unanimous opinion issued today, the Ninth Circuit reversed the district court. Writing for the panel, Judge A. Wallace Tashima held that adjudication of the van drivers' claims would not interfere with a PUC order that permits airport shuttle carriers like SuperShuttle to hire employee or independent contractor drivers so long as they maintain sufficient control over the drivers to ensure safety and service. Agreeing with the plaintiffs and the PUC itself, which submitted an amicus brief in support of the van drivers, the court of appeals concluded that adjudicating the van drivers' claims and finding that they are in fact treated by SuperShuttle as employees under California law would not preclude other airport shuttle carriers from treating their drivers as true independent contractors, and thus would not interfere with the PUC's regulatory authority.

The Ninth Circuit remanded the case to the Northern District of California, where class proceedings on the merits of the van drivers' state and federal claims may now proceed.

According to Altshuler Berzon lead counsel Michael Rubin: "SuperShuttle has chosen to impose on its drivers highly detailed and strictly enforced requirements of workplace routine, performance, dress, and appearance – right down to dictating the color of the drivers' socks. At

the same time, the company claimed that no court, state or federal, could review its unilateral decision to classify these drivers as independent contractors, despite treating them like employees under California law. The Ninth Circuit's holding ensures that these drivers and other workers in industries regulated by the California PUC retain the same ability to vindicate their rights in court as other employees under California law."

Plaintiffs were represented on appeal by Altshuler Berzon LLP, as well as by Hinton, Alfert, Sumner & Kaufmann; Leonard Carter, LLP; Lewis, Feinberg, Lee, Renaker & Jackson, P.C.; and Rukin Hyland Doria & Tyndall LLP. The case name is *Roosevelt Kairy v. SuperSuttle International, Inc.*, No. 10-16150, 2011 WL 5222891, --- F.3d ---- (9th Cir. 2011).