AMERICAN ARBITRATION ASSOCIATION

Class Action Employment Tribunal

JAMES MEGLIO, Claimant, v. FREEDOM ROADS, LLC, KARIN BELL and MARCUS LEMONIS, Respondents.	AAA CASE NO. 01-23-0003-1432

Interim Award on Arbitration Clause Construction

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration Agreement entered into by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties submitted concerning the issue before me, do hereby issue this Interim Clause Construction Award as hereinafter set forth. The parties to this arbitration are the Claimant, James Meglio, represented by Raven Moeslinger, Esq. and Nicholas F. Ortiz, Esq., and the Respondents, FreedomRoads, LLC, Marcus Lemonis, and Karin Bell,

represented by Chirsotpher B. Kazmarek, Esq. and Puncet K. Dhaliwal, Esq.

The Claimant commenced the present action on June 20, 2023, in the Superior Court for Worcester County, Massachusetts. The court stayed that action so that the Claimant could pursue his claims in this forum, in light of the Parties' Arbitration Agreement. The Claimant purports to bring this case as a class action on behalf of himself and also on behalf of all other persons who worked as sales representatives in Respondent's Massachusetts stores and who worked more than 40 hours in any week or who worked on any Sunday between June 16, 2020, and the date of a final Award herein. His claims include class claims for unpaid overtime and Sunday premium pay under Massachusetts wage and hour laws and individual claims for unpaid sick time, paid time off, and incentive pay.[1]

The Arbitration Agreement provides that it will be governed by the provisions of the Federal Arbitration Act. With respect to class claims, the Agreement provides as follows: "Class claims…may be heard together only by written agreement of both FREEDOM ROADS, LLC, Inc., and the

[1] Counsel have informed the Arbitrator that they have reached an agreement to settle the individual claims; hence, these claims will be dismissed by separate order and will not be further addressed in this Interim Award.

complaining associate(s) unless the party…seeking to have class claims heard together can demonstrate to a court or arbitrator that class…claims are the *only effective way* to halt and redress the alleged violations about which the party…complains." (Emphasis supplied.)

Under the Supplementary Rules for Class Arbitrations of the American Arbitration Association, when an arbitrator or arbitration panel is presented with a class claim, he or she must first determine whether the applicable arbitration clause permits the arbitration to proceed on behalf of a class. That determination must be embodied in a Clause Construction Award, which must then be stayed so that the parties may pursue a motion to vacate or confirm the interim award. In this case, counsel for the Parties requested that the Arbitrator delay the clause construction determination while the Claimant obtained preliminary discovery concerning the putative class. The Arbitrator acceded to the Parties' request, and twice extended the time for discovery. At length, counsel for the parties announced that they were ready to proceed and had agreed upon a briefing schedule, which the Arbitrator approved. Briefing is now complete and the clause construction issues are ripe for decision.

The Arbitrator will first briefly summarize the background of the case and the question for his decision. He will then proceed with his analysis, and set forth the Interim Award.

A. Background and Issue.

The Respondent Freedom Roads, LLC ("Freedom Roads" or "Respondent")[2] is an Illinois Corporation engaged in the manufacture and sale of Recreational Vehicles (RVs). It maintains stores in several states, one of which is Massachusetts, where it has four stores. The LLC is qualified to do business in the Commonwealth of Massachusetts. The Claimant James Meglio ("Meglio" or "Claimant") is a citizen and resident of the state of Rhode Island. He worked for Freedom Roads as a sales associate from July 28, 2021, until June 7, 2023. All members of the putative class were employed as sales associates by Freedom Roads during the period specified in the Statement of Claim. All signed arbitration agreements with terms identical to those in the Claimant's agreement. The

[2] The Arbitrator is fully aware that there are individual Respondents also. These consist of two of the Respondent Freedom Roads' managing agents. The Claimant contends that under applicable law, these persons are individually liable for the violations of statutes alleged in the statement of claim. That issue has not as of yet been addressed by either evidence or briefing. The Arbitrator intends, however, that the provisions of this Interim Award are to be binding on the other Respondents as well as LLC.

total number of the putative class members, not counting the Claimant himself, is 101.

All class members, including Meglio, were paid by a "draw and commission" compensation plan that guaranteed them 150 percent of the wages due under the applicable minimum wage for overtime and Sunday hours worked in each given work week. Until 2019, this payment method was considered legal under the governing interpretation of Massachusetts wage and hour law. But on May 19, 2019, the Supreme Judicial Court of Massachusetts decided the case of *Sullivan v. Sleepy's*, in which it held that such a compensation plan did not comply with the applicable statute, which required, in addition to the commissions paid, a payment of one-and-a-half times the employee's hourly rate for each hour of overtime or Sunday work performed. 482 Mass. 227, 228 (2019).[3]

Freedom Roads did not immediately change its pay practices for sales associates in response to the Court's decision. The draw and commission system remained in effect during the entire time of Meglio's employment with Freedom Roads. Finally, in December of 2023, four and a

[3] At the time, Massachusetts had a "blue law" that required premium pay for hours worked on Sunday or on other specified holidays, even if these hours were not "overtime." This Massachusetts legislature has since phased out this law.

half years after the high court's decision in *Sleepy's*, and roughly six months after Meglio brought his claims before this Tribunal, Freedom Roads changed its compensation plan to one that is compliant with the SJC's interpretation of the applicable statute. When it did so, it told its employees that the new plan was the result of a "change in the law." It did not specify when the law had changed or supply any further details. Nor did it disclose the pendency of the present case.

The Arbitrator obtained the foregoing summary of background facts from the pleadings, the briefs, and discovery responses provided by counsel. They do not appear to be in dispute.

B. The Issue Presented.

The only issue to be determined at this time is whether the Arbitration Agreement applicable to the Claimant and to the members of the putative class permits this case to proceed as a class arbitration.

C. Analysis.

1. Controlling Law under the Federal Arbitration Act.

The contemporary jurisprudence of the United States Supreme Court on the subject of class arbitration is clear. First, class and collective action waivers are enforceable.[4] Secondly, contrary state rules of decision are pre-empted by the Federal Arbitration Act in cases where the Act applies.[5] Finally, class arbitration is prohibited unless there is a contractual basis for class arbitration.[6] Such a basis must be found in the text of the agreement; it may not be inferred from outside circumstances in cases where the contract is silent.[7] All the same, there is nothing in the statute or the case law that prohibits class arbitration if the parties agree to it.

2. The Agreement at Issue.

In the present case, we are not presented with an unqualified class action waiver. Nor do we see an agreement that embraces class arbitration without qualification. The language in the agreement at issue is somewhere in between. In it, the parties have agreed that class arbitration is appropriate under some circumstances. The permissible circumstances present themselves when a judge or arbitrator determines that class

[4] *Epic Systems Corporation v. Lewis*, 584 U.S. 497 (2018).

[5] *AT&T Mobility v. Conception*, 566 U.S. 333 (2011).

[6] *Stolt Nielson S.A. v. AnimalFeeds Int'l Corp*., 559 U.S. 662 (2010).

[7] *Id.; Lamps Plus, Inc. v. Varela*, 587 U.S. 176 (2019).

arbitration is the only effective way “to halt and redress” the statutory violations of which the Claimant complains.

The Arbitrator must determine what this language means in the context of this case. The Parties unsurprisingly propose very different interpretations, which the Arbitrator will examine in the next section. Before doing so, however, the Arbitrator makes one preliminary observation. Appropriate interpretation of the disputed text cannot mean that he must find class arbitration is the only *possible* means to halt and redress egregious conduct. The operative word is “effective.”

3. The Parties’ Interpretations.

To Freedom Roads and its counsel, the issue before the arbitrator is simple and easily resolved. In order to rule the disputed clause permits class arbitration, the Arbitrator must find that class arbitration is the only effective means to both halt and redress the Claimant’s grievances. In this case, class arbitration would do neither. Class arbitration isn’t needed to halt the wage and hour violations because they have already been halted, either by the Respondent’s voluntary amendment of its compensation plan or by the act of the legislature in phasing out Sunday premium pay. Class arbitration isn’t needed to redress past misconduct because putative class

members can negotiate with Freedom Roads or file their own arbitration demands. Q.E.D. Case closed.

The Claimant and his counsel take an entirely different approach. They examine the "effective means to halt and redress" language of the clause at issue and seek to discern the parties' intent by finding the source of such phrasing in case law. Their search led them to a line of cases from state courts, primarily in California, in which the issue was to determine the conscionability or unconscionability of class action waivers as a matter of state law.[8] These cases determined that whether a class action waiver was unconscionable depended on a number of factors for a court to consider, bearing in mind the obtaining of complete relief not only for the Claimant seeking to represent the putative class, but for the class members as a group.[9] Applying those factors, which the Arbitrator will review below, to the circumstances of this case, they argue that class arbitration is appropriate in this case under the arbitration clause at issue.

4. The Arbitrator's Reasoning and Holding.

[8] *See, e.g., Discover Bank v. Superior Court*, 113 P.3d 1100 (Cal. Sup. Ct. 2005)
[9] *Id.*

The Respondent is quick to point out that California law does not apply to this case, and that the holdings of all of the cases cited by the Claimant have been pre-empted by the United States Supreme Court's holdings in several cases. These observations are perfectly true but miss the point. Meglio and his counsel are not arguing that the California cases are binding authority or even persuasive authority. Rather, they argue that these cases are the source of the "effective[ly]… halt and redress" language included in the agreement at issue, and thus provide the arbitrator with a clue as to what the drafter of the agreement intended when it was written.[10]

After careful consideration, the Arbitrator finds that the Claimant's method of construing the Agreement is the more reasonable approach. It appears that someone, sometime in the past, was trying to draft an arbitration provision that would survive an attack on its conscionability, and settled on the language in question. There is no direct evidence that this was the case, but the inference is much more reasonable than assuming Freedom Roads' then counsel plucked the language out of thin air.

[10] The Arbitrator has not been provided with evidence concerning the drafting of the disputed language, or even how long it has been included in the Respondent's "form" agreement. Certainly, there is no evidence of negotiation about the wording of the agreement, because there wasn't any; the Agreement is a contract of adhesion.

With that background, the Arbitrator turns to the factors identified by the Claimant's counsel as arguing for the unique effectiveness of class arbitration. These are as follows:

1. The modest amount of damages at stake in wage cases. Claimant concedes that his own damages are modest, and assert that the damages of the putative class members will likewise be modest. The Respondent does not challenge this assertion. This alone makes any form of individual claim litigation unlikely.

2. The fear of reprisal if class members come forward with individual claims. This factor is hard to gauge, but it is logical to assume that someone who asserts a claim while working might be at least a bit fearful that the employer won't like what he or she has done.

3. Affected employees likely do not know their rights. The Arbitrator agrees that this is probable, because the affected employees were told only that the new compensation plan was brought about by a "change in law." Freedom Roads did not tell them that the change had taken place over four years' previously, or advise them of Meglio's pending claim.

4. Freedom Roads actively misled sales associates. The Claimant argues that the Supreme Judicial Court in *Sleepy's* did not actually change the law, but only the interpretation of a statute whose text remained the same. Thus, it argues, the Respondent misled its employees when it said the law had changed. The Arbitrator does not agree. A change in the interpretation of a statute can be quite as profound as a legislative amendment. Still, the fact that Freedom Roads changed its plan only after Meglio brought his claim, and withheld the date of the change as well as the pending claim from its current employees, are equities that favor the Claimant's position.

5. The applicable statute of limitations. The Claimant points out that should a class be certified, class members will receive the benefit of "Meglio's" Statute of Limitations – three years backward from the date he brought his suit in 2023. In contrast, the statute of limitations for any individual claims will be measure backwards from the date of their filing. The Respondent does not contest this assertion.

6. The “real world” difficulties of putative class members finding lawyers willing to take on relatively small cases. Again, the Respondent chose not to address this point.

In contrast, the Respondent argues, as the Arbitrator set forth above, that a class action is not necessary to halt its previous violations of the law because it has already halted, and that individual members of the putative class can always assert their claims by informal engagement with management or by filing individual claims. These arguments fail.

The Respondent’s change in the compensation plan, coupled with the legislature’s phasing out of the requirement for Sunday premium pay, may mean that the violations of the statute of which the Claimant complains are no longer taking place. Still, they do not address available remedies for putative class members. Even more important, it is apparent to the Arbitrator that it took the threat of a class action to produce the “voluntary” change in the compensation plan. The Respondent otherwise would apparently have kept its legally defective former plan in place. Thus, the prospect of class arbitration has already played a role in halting the conduct of which the Claimant complains.

Concerning redressing such conduct, Freedom Roads says its management is willing to informally address the claims of putative class members, but this representation falls well short of a binding legal commitment. As for individual arbitration claims, the Arbitrator does not believe they are an efficient and practical alternative to a class action.

There are 101 putative class members. We do not know how many will file a claim. If none or only a few do so, then few or none will obtain any relief at all. If several do, there will be multiple arbitrations with multiple filing fees and multiple arbitrator's fees. If the filings reach 25 in number, they will fall within the AAA's "mass arbitration" protocol. If so, some efficiencies, such as the appointment of a "process arbitrator" to resolve discovery issues and the like, may be available; but there will still be multiple arbitrators. No one, including the Respondent, will benefit in that event. None of these possibilities strike the Arbitrator as effective.

The Arbitrator will adopt the interpretation of the arbitration clause urged by the Claimant, and hold that the only effective way to both "halt and redress" the conduct at issue is class arbitration. This interpretation is consistent with Massachusetts case law, which looks to the interpretation particular language has been given by other courts as well as the dictionary

meaning of the words.[11] Moreover, it does not run afoul of the jurisprudence of the United State Supreme Court concerning class arbitration. There is a "contractual basis" for class arbitration in the express language of the arbitration clause at issue.[12]

The Arbitrator cautions that this holding does not, in and of itself, mean that a class has been or will be certified. The Claimant's class claims must still survive scrutiny under Rule 4 of the AAA's Supplementary Rules for Class Arbitrations. For the present, the Arbitrator holds only that the parties' arbitration agreement permits the instant claims to proceed on a class basis if they otherwise qualify under the Rules.

D. The Interim Award.

1. The Arbitrator finds that there is a contractual basis for class arbitration in the Arbitration Agreement of the parties, which permits the Claimant's claims to proceed as a class arbitration

[11] *Suffolk Const. Co., Inc. v. Illinois Union Ins. Co*., 80 Mass. App. Ct. 90, 94 (2011).

[12] *See fns.* 6, 7, *supra*.

within the meaning of the Supplementary Rules for Class Arbitration of the American Arbitration Association.

2. This Interim Award is hereby STAYED for a period of thirty (30) days so that either party may move a court of competent jurisdiction to either confirm or vacate the Interim Award of the Arbitrator.

3. The Parties, through counsel, are directed to promptly advise the Arbitrator of the filing of such a motion or motions, so that this stay may be extended while the motion is pending.

4. In the event of the filing of a motion or motions to vacate or confirm this Interim Award, the Parties are further directed to advise the Arbitrator of the ruling of the court, so that appropriate further action may be taken in this case at that time.

5. In the event the Parties elect not to seek judicial review of the Interim Award, they are likewise directed to advise the Arbitrator so that further proceedings in this case may proceed.

SO ORDERED THIS JANUARY 22, 2025

s/ Robert L. Arrington

Robert L. Arrington, Arbitrator