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3 Takeaways From The 9th Circ.'s Meal And Rest Break Ruling

By **Linda Chiem**

Law360 (January 20, 2021, 5:07 PM EST) -- The Ninth Circuit's blessing of a U.S. Department of Transportation finding that California's meal and rest break rules are preempted and cannot be applied to interstate commercial truckers reinforced Chevron deference and bolstered business' efforts to clamp down on class action litigation.

A unanimous Ninth Circuit panel on Jan. 15 **backed** the Federal Motor Carrier Safety Administration's December 2018 determination that California's meal and rest break rules conflicted with federal regulations governing truckers' hours of service and unduly burdened interstate commerce.

The ruling dealt a blow to California labor officials, the International Brotherhood of Teamsters and individual drivers who claimed the FMCSA's preemption decision **arbitrarily and capriciously** undermined the Golden State's basic worker protections.

Experts told Law360 that the petitioners **faced an uphill battle** from the start, given the Chevron deference that courts frequently afford government agencies in interpreting statutes and rules. Ultimately, the Ninth Circuit upheld the FMCSA's authority and judgment in regulating the safety of the commercial motor vehicle industry.

Business-side attorneys applauded the ruling, saying it provides regulatory uniformity and hinders class actions accusing trucking companies of flouting California's meal and rest break rules.

"The Ninth Circuit's decision is a well-reasoned decision and marks a light at the end of the tunnel for motor carriers," Scopelitis Garvin Light Hanson & Feary PC partner Jim Hanson said. "They have been subject to hundreds and maybe even thousands of class action lawsuits alleging meal and rest break violations. This decision should end meal and rest break claims in California. Carriers will be able to make operational decisions to effectuate the safe delivery of freight without worrying about compliance with this state law."

However, plaintiffs attorneys are hopeful that an en banc Ninth Circuit could review the panel's ruling, or that President Joe Biden's administration could overhaul the FMCSA determination that led to the litigation in the first place.

Here are a few takeaways from the Ninth Circuit's decision.

Chevron Deference Wins Out

Despite the petitioners' argument that the FMCSA flip-flopped on the issue of preemption, the panel's decision underscores the continued viability of Chevron deference, experts say.

The U.S. Supreme Court established the so-called Chevron doctrine in 1984's Chevron v. Natural Resources Defense Council. It essentially instructs courts to defer to a federal agency's interpretation of an ambiguous law if it's reasonable.

The dispute before the Ninth Circuit hinged on how the DOT and FMCSA interpreted the Motor Carrier Safety Act of 1984, which grants the secretary of transportation the express power to preempt any

state law or regulation "on commercial motor vehicle safety."

For more than a decade, the FMCSA held the position that California's rules "do not fall within the agency's statutory authority under Section 31141 to displace state laws" because they are not "specifically directed at commercial motor vehicle safety," but are instead laws "of general applicability."

But under the Trump administration, the FMCSA in late 2018 changed course, issuing an order and determination that California "may no longer enforce" its meal and rest break, or MRB, laws against property-carrying commercial motor vehicle drivers who are already subject to federal hours-of-service regulations.

The FMCSA sufficiently justified why it changed its mind in 2018 to find that California's MRB rules were preempted because they "would cause an unreasonable burden on interstate commerce," the Ninth Circuit said.

Numerous public comments argued that California's more demanding rules foisted frequent, arbitrarily set breaks onto drivers that resulted in lost driving time and lost productivity. For example, truck drivers would have to slow down, exit the highway, find a safe and suitable location to park and secure their vehicles, and then exit the vehicle — all of which can take up to 90 minutes. Companies' administrative burdens included higher compliance costs, changes to delivery and logistics programs, revision of routes and changes to compensation plans, the Ninth Circuit pointed out.

"The law is not always static, and an agency is entitled to change its position when it no longer believes its prior interpretation is correct," Hanson explained.

Bob Roginson, chair of Ogletree Deakins Nash Smoak & Stewart PC's trucking and logistics practice group, said the Ninth Circuit's decision recognized the "substantial and real-world obstacles" that motor carriers faced complying with California's MRB rules.

"Application of California's meal and rest period requirement to motor carriers and drivers has served only the interests of the plaintiffs bar and the Teamsters' organizing efforts seeking to exploit the challenges motor carriers face in complying with these onerous requirements," Roginson said. "The decision rightfully upholds the Department of Transportation's authority in this area and will serve to reduce meritless litigation."

Marc Blubaugh, co-chair of Benesch Friedlander Coplan & Aronoff's transportation and logistics practice group, called the Ninth Circuit's decision "absolutely terrific," saying it will hopefully serve as an "analogical template for what should happen in Washington State," whose MRB rules were also **recently declared preempted** by the FMCSA.

"Predictability and uniformity is the lifeblood of a thriving transportation industry," he said. "The Ninth Circuit just gave a much-needed booster shot to trucking companies that operate in an otherwise challenging California environment."

Dilts Precedent Doesn't Apply

The decision may have surprised litigants who expected the panel to lean on the Ninth Circuit's decision in 2014's Dilts v. Penske Logistics , which **upheld** California's MRB rules as generally applicable laws governing the state's broader workforce that were not targeted at commercial truck drivers.

Dilts also addressed whether California's MRB rules are preempted by federal regulations, but it dealt with an entirely different statute. The Ninth Circuit held in Dilts that so-called background laws that are generally applicable to all workers in California are not preempted by the Federal Aviation Administration Authorization Act of 1994. The FAAAA bars any state law "relating to a price, route or service of any motor carrier."

This dispute addresses preemption under the Motor Carrier Act, not the FAAAA. According to the Ninth Circuit, Dilts did not foreclose the FMCSA's interpretation in this dispute because Dilts didn't address whether the MRB rules could fall within Section 31141's scope.

"The petitioners tried to go back to the same arguments that were made in Dilts," Hanson said. "The court in Dilts started its analysis with the 'presumption against preemption.' The Ninth Circuit correctly dismissed the applicability of the 'presumption' because there can be no presumption against preemption when dealing with an express preemption grant like the one Congress gave the Secretary."

By taking a "strict constructionist approach in favor of the FMCSA's preemptive power based on the language of Section 31141," the Ninth Circuit "has no qualms in rejecting all of the arguments advanced by the petitioners, including brushing aside its earlier decision in Dilts," according to Hanson Bridgett LLP partner Bill Taylor, who represents trucking companies.

"And tantamount to a backhanded slap to the face of the state, the Ninth Circuit had no problem in citing to various punitive decisions by its state courts against motor carriers for not complying with the state's own meal period and rest breaks timelines, noting particularly that the California statute includes the prospect of a misdemeanor prosecution for violating its terms," Taylor added.

The court "turned somewhat sanguine by essentially implying that what Congress giveth, Congress can taketh away in terms of any future legislation that might eliminate or restrict the regulatory foundation upon which it relied to rule in favor of FMCSA's preemptive jurisdiction," Taylor added.

A Possible Reprieve From a New Administration

Deepak Gupta of Gupta Wessler PLLC, who argued the Ninth Circuit case for individual truck drivers Duy Nam Ly and Phillip Morgan, said that he's optimistic that the FMCSA under Biden will reverse the agency's 2018 determination on the preemption issue.

David A. Rosenfeld of Weinberg Roger and Rosenfeld PC, who represented the International Brotherhood of Teamsters, Local 2785 and an individual in the case, also hoped that the new administration will take another look at this issue.

"The court's opinion leaves that clearly open," Rosenfeld said. "They said [with] Chevron deference, it is a reasonable interpretation of the statute. They didn't say that it is the only interpretation."

The FMCSA in November issued a similar order determining that Washington State's MRB rules were preempted and cannot be enforced against interstate truck drivers. Rosenfeld said he's confident that Biden's DOT will issue a determination that no state MRB rules are preempted.

Christian Schreiber of Olivier Schreiber & Chao LLP, which represents plaintiffs in employment and consumer class actions, told Law360 that decisions like this one "demonstrate the lengths some will go to ignore the spirit of a law."

"The tireless lobbying of the trucking industry to overturn worker protections has led to tortured interpretations like this," he said. "Every crack, however small, is seen as an opportunity to roll back a protection designed to make workers and the public safer. I expect those cracks will be shored up by the new administration so that the spirit of these regulations is enforced. Workers will benefit when we realize that judicial resources are better spent on safety than the endless parsing of prepositions."

Other attorneys, however, are skeptical that Biden's DOT would abruptly reverse course on this issue.

"While it is certainly possible that the FMCSA under the Biden administration will rescind the agency's decision to preempt these burdensome state laws, I think that an immediate sea change would be historically unprecedented at FMCSA," Benesch's Blubaugh said.

"Generally speaking, while we can definitely expect a frustrating and heightened regulatory environment under the Biden administration, I would be fairly surprised (and disheartened) to see FMCSA turn on a dime and suddenly withdraw its preemption order," Blubaugh added. "Pulling a full about-face and taking a position that is 180 degrees from where it currently stands would blemish the agency."

McCarter & English LLP partner Ron Leibman said the Ninth Circuit's decision was based on "incredibly solid law" and that it would be difficult for the new administration to overturn the results.

"The FMCSA wasn't going beyond its realm. It was only saying [California's MRB rules don't apply to] commercial interstate commercial truck drivers — it's not saying what people in a diner should do," Leibman told Law360. "The FMCSA did a good job of explaining its reasoning. The Biden administration has bigger issues to deal with, and even with its pro-labor bent, this is not the biggest transportation issue it has."

--Editing by Alanna Weissman and Emily Kokoll.
