

AMERICAN ARBITRATION ASSOCIATION

GABRIEL CILLUFFO, et al,

Claimants,

v.

CENTRAL REFRIGERATED SERVICE,
INC., CENTRAL LEASING, INC., JON
ISAACSON and JERRY MOYES,

Respondents.

77 160 00126 13 PLT
(Collective Matter)

ORDER

Claimants have proposed a notice plan along with a brief in support. Respondents have submitted Respondents' Objection to Claimants' Proposed Notice. The Arbitrator has also received and considered emails sent by counsel on April 9 and 10. Respondents object to Claimants' plan and proposed notice in several ways. The objections and the Arbitrator's rulings follow.

1. Respondents object that the Claimants seek to "clarify" the defined class by limiting it to truckers who leased only a single truck. The Complaint in this case defined the class as "all truckers who lease a truck from Central Leasing, Inc. to drive for CENTRAL REFRIGERATED SERVICE, Inc. during the three years preceding the filing of the initial complaint and up through the date of final judgment herein and subject to any equitable tolling for any applicable portion of the limitation period." For purposes of notice, the Arbitrator agrees with Respondents that this definition may include truckers who leased one or more trucks, and notice should be given to owner operators who leased multiple trucks. This ruling is not intended to foreclose a future argument that the class

should be clarified or redefined, or any objection to such an argument.

2. Respondents object to providing the names and contact information of truckers to Claimants' counsel, arguing notice should be handled by a third-party administrator for efficiency and privacy reasons. Although some courts have so ordered, the Arbitrator finds no reason to use a third-party administrator in this case. Therefore, contact information shall be provided to Claimants' counsel for purposes of providing notice. Claimants' counsel shall not use the disclosed information for any purpose other than providing the notices authorized by the Arbitrator in this case. As some courts have done in similar situations, the Arbitrator "reminds the attorneys for both parties that they are aware of their ethical duties, as well as [applicable] Rules of Professional Conduct, which they must obey if they are contacted by potential opt-in plaintiffs seeking further information." *Hart v. U.S. Bank NA*, CV 12-2471-PHX-JAT, 2013 WL 5965637 (D. Ariz. Nov. 8, 2013).

3. Claimants seek contact information consisting of names, last known addresses, cellphone numbers, email addresses and the last four digits of individuals' social security numbers. Respondents object to providing any of this based on their argument that a third-party administrator should handle notice, and also object on privacy grounds. The cases cited by the parties show that courts have taken a case-by-case approach to determining what information is necessary to provide accurate and timely notice. In this case, the Arbitrator determines that Respondents should provide to Claimants' counsel contact information consisting of names, last known addresses, cellphone numbers and email addresses. Telephone numbers shall be used only for

purposes of determining addresses to which a notice will be sent. Neither counsel nor their agents shall use the telephone numbers disclosed by Respondents to call or text drivers for any other purpose. Social security numbers will not be disclosed.

4. Respondents object to sending notice by email. The Arbitrator determines that email notification is appropriate and reasonable in this case.

5. Respondents object to requiring notice through their Qualcomm System. This notice will only go to current drivers, so the mailing addresses and emails produced by Respondents should mostly be current and accurate. Assuming that to be the case, the Arbitrator determines that notice through the Qualcomm System will not be required.

6. Respondents waive their objection to one postcard reminder “so long as notices are not emailed ... and the reminder card used neutral language” Email notice will be used, so Respondents will be considered as objecting. The objection is overruled. A postcard reminder is appropriate and reasonable in this case to ensure accurate and timely notice.

7. Respondents object to the notice referring to June 1, 2009 as the eligibility date, rather than September 14, 2009. The complaint in this case was filed June 1, 2012. The three years before that date extended to June 1, 2009, so the notice may refer to that date. This ruling is not intended to foreclose a future argument that the tolling of the statute of limitations did not begin until a later date, so some claimants or time periods are barred.

8. Respondents object that the proposed notice does not adequately explain the consequences and possible costs of joining the action. The courts are divided on

whether and how to include any such disclosure. In any event, the present matter is an arbitration so the rules applicable to court actions are not strictly applicable, and the agreements at issue specify that for most truckers the costs of arbitration will be borne by the company. Under these circumstances, the notice is adequate and the objections are overruled.

9. Respondents list other objections to the form of notice proposed by Claimants. The Arbitrator adopts and approves the Claimants' form of notice, with the following changes:

- a. The first sentence after "What this lawsuit is about:" shall be revised to read: "The lawsuit claims that owner operators were employees, not independent contractors, and that Central failed to pay the owner operators the federal minimum wage each week they drove for Central. The lawsuit seeks back pay and liquidated damages."
- b. The final two sentences of the notice shall be revised to read: "More detailed information can be learned by calling the lawyers for the Drivers at Getman Sweeney at 845-255-9370, or by viewing the lawyers' website at CentralOO.com."

Respondents' other objections to the form of notice are overruled.

10. Respondents object to the contents of the proposed reminder card. The objections are overruled, and the Arbitrator adopts and approves the Claimants' proposed form.

11. Respondents object to the contents of the proposed Consent to Sue form.

The objections are overruled, and the Arbitrator adopts and approves the Claimants' proposed form.

Therefore, good cause appearing, the following FLSA notice plan is adopted and ordered:

1. Respondents shall provide to Claimants' counsel the contact information referred to above as soon as possible, and in no event later than April 28, 2014, and shall notify the Arbitrator of their compliance with this order.

2. Claimants shall mail and email the notice and consent to sue form approved above, and shall notify Respondents and the Arbitrator of the date of mailing.

3. Claimants shall send a postcard reminder (in the form of Exhibit 3 to Claimants' Brief) to all persons who have not responded after sixty days.

4. Claimants shall file any consent to sue forms received by them with the American Arbitration Association, and, if required, the federal district court.

DATED: April 22, 2014.

A handwritten signature in black ink, appearing to read "Patrick Irvine", written over a horizontal line.

PATRICK IRVINE
ARBITRATOR