

Adolph v. Uber Technologies, Inc.

2023 DJDAR 7311

Supreme Court of California

PAGA plaintiffs do not lose standing to litigate non-individual claims in court when the plaintiff's individual claims are subject to arbitration.

FACTS/PROCEDURE

The Private Attorneys General Act of 2004 (PAGA)¹ was enacted to create new civil penalties for Labor Code violations and to allow aggrieved employees, acting as private attorneys general, to recover those penalties. PAGA authorizes an aggrieved employee, acting as a proxy or agent of the state Labor and Workforce Development Agency, to bring a civil action against an employer on behalf of himself or herself and other current or former employees to recover civil penalties for Labor Code violations. To have standing under PAGA, an aggrieved employee must be (1) someone who was employed by the alleged violator and (2) against whom one or more of the alleged violations was committed.²

Here, Plaintiff Erik Adolph worked as a driver for Uber, delivering food to customers through the company's Uber Eats platform. As a condition of his employment, Adolph was required to accept the technology services agreement which contained an arbitration clause pertaining to all work-related claims against Uber. Another clause in the agreement stated: "To the extent permitted by law, you and Company agree not to bring a representative action on behalf of others under PAGA in any court or in arbitration." However, Adolph filed a claim for civil penalties against Uber in superior court in 2019 alleging individual and class claims. He claimed that Uber misclassified him and other delivery drivers as independent contractors rather than as employees and, as a result, wrongfully failed to reimburse them for necessary business expenses. In February of 2020, Adolph amended his complaint to add a claim for civil penalties under PAGA based on the same theory of misclassification. In July of 2020, the trial court granted a motion by Uber to compel arbitration of Adolph's individual Labor Code claims and dismissed his class action claims. Subsequently, with the trial court's permission, Adolph filed his operative second amended complaint, which eliminated his individual Labor Code claims and class claims and retained only his PAGA claim for civil penalties. The trial court then granted Adolph's request for a preliminary injunction, preventing arbitration from proceeding. Uber filed a second motion to compel arbitration, which was denied by the trial court. Uber appealed the injunctions and the Court of Appeal affirmed, holding that PAGA claims are not subject to arbitration. Uber then filed a petition for review in this Court, but before Adolph could file an answer, the United States Supreme Court decided *Viking River Cruises, Inc. v. Moriana* in 2022, which held that a PAGA plaintiff loses standing when they seek to adjudicate non-individual PAGA claims in court once an individual claim has been committed to a separate proceeding.³ This Court then granted review to provide guidance on statutory standing under PAGA.

¹ Cal. Lab. Code, § 2699.

² *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 83.

³ *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906.

HOLDING/DISCUSSION

First, the Court here affirms the prior holding that a pre-dispute categorical waiver of the right to bring a PAGA action is unenforceable as it violates California public policy⁴ and Civil Code sections 1668⁵ and 3513⁶. Next, the Court turns to the issue of whether an aggrieved employee who has been compelled to arbitrate claims under PAGA that are premised on Labor Code violations actually sustained by the plaintiff maintains statutory standing to pursue PAGA claims arising out of events involving other employees in court. This court holds that a plaintiff does maintain standing to pursue PAGA claims arising out of events involving other employees in court, despite being compelled to arbitrate their individual claims⁷, effectively overruling the holding in *Viking River* in California.

The California Supreme Court reasoned that because the United States Supreme Court was interpreting California State law, the holding in *Viking River* is not binding. Therefore, this Court holds that standing under PAGA is *not affected* by enforcement of an agreement to adjudicate plaintiff's individual claim in another forum. Arbitrating a PAGA plaintiff's individual claim does not nullify the fact of the violation or extinguish the plaintiff's status as an aggrieved employee; thus, compelling the plaintiff's individual claims in a different proceeding does not deprive the plaintiff of standing to pursue a representative PAGA claim in court.

The Court here reasoned that PAGA standing is not inextricably linked to the plaintiff's own injury; employees who were subjected to at least one unlawful practice have standing to serve as PAGA representatives even if they did not personally experience each and every alleged violation⁸. Any other reasoning or holding would impede an employee's ability to prosecute his or her employer's violations committed against other employees and undermine PAGA's purpose of augmenting enforcement of the Labor Code. Accordingly, where a plaintiff has filed a PAGA action comprised of individual and non-individual claims, an order compelling arbitration of individual claims does not strip the plaintiff of standing to litigate non-individual claims in court.

Lastly, the Court notes that if the arbitrator determines that Adolph is not an aggrieved employee and the court confirms that determination and reduces it to a final judgment, the court would give effect to that finding, and Adolph could no longer prosecute his non-individual claims due to lack of standing.

The judgment of the Court of Appeal is reversed, and the case is remanded for further proceedings consistent with this opinion.

⁴ *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348.

⁵ Cal. Civ. Code, § 1168 (prohibiting contractual waiver that exempt any one from responsibility for his own violation of law).

⁶ Cal. Civ. Code, § 3513 ("a law established for a public reason cannot be contravened by a private agreement").

⁷ See *Iskanian, supra*, 59 Cal.4th at p. 384 (explaining that whether or not an individual claim is permissible under PAGA, a prohibition of representative (i.e., non-individual) claims frustrates PAGA's objectives).

⁸ *Kim, supra*, 9 Cal.5th at p. 85.