SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III **PART** 32

Justice

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INDEX NO. 151384/2018

MOTION DATE

MOTION SEQ. NO. 003

ANTONIO ADAME, ANGEL LOJANO, ROBNEY CARABAJO, MIGUEL RAMOS, CHRISTOPHER FLORES, MANUEL PESANTEZ, MARIO PESANTEZ, FRANKLIN LOPEZ, MAXIMO SIRI, ARMANDO GUTIERREZ, OMAR CAMPOS, EDISON GUTIERREZ, EDGAR NARANJO, PEDRO GUTIERREZ, SILVIO NARANJO, SEBASTIAN BRAVO, JULIO MASAQUIZA, SEGUNDO MASAQUIZA

Plaintiff,

- v -

DECISION + ORDER ON MOTION

ANACOSTIA RAIL HOLDINGS COMPANY, NEW YORK & ATLANTIC RAILWAY, BRUCE A. LIEBERMAN, PETER A. GILBERTSON, PAUL VICTOR,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 90, 91, 92, 93, 94, 95, 133, 135, 136, 137, 138, 163, 168, 170, 171, 184

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion is determined as follows:

This is an action to recover, *inter alia*, unpaid wages based upon violations of New York's Labor Law. Plaintiffs allege they were day laborers hired by Defendant New York Atlantic Railroad ("NYAR") which operates freight rail service on tracks owned by the Long Island Railroad. Defendant Anacostia Rail Holdings Company ("Anacostia") owns and operates NYAR and other railroads. Plaintiffs filed a complaint wherein they allege from 2010 to 2016, they were hired at the rate of $120.00 per day as "employees" of NYAR's Maintenance of Way ("MOW") Department. Plaintiffs assert that they performed integral railroad maintenance tasks, including installing and maintaining rails ties and ballasts; switch maintenance and repairs; clearing tracks and servicing railcars. Plaintiffs claim they were compelled to work shifts lasting more than 24-hours and subjected to abusive behavior. Plaintiffs pled that they were sought out because of their actual or perceived immigration status and hired to replace union MOW workers.

Plaintiff pled causes of action based upon violations of the New York City Human Rights Law, New York Labor Law §§195[1], 195[3] and 650 as well as the Federal Employers Liability Act. Under the Labor Law claims, Plaintiff seek to recover damages based upon Defendants' alleged failure to pay the New York State mandated minimum wage or overtime wages. All Defendants answered collectively and pled thirty-one affirmative defenses.

Now, Defendants move pursuant to CPLR §3211[a][1] and [7] to dismiss Plaintiff's New York Labor Law causes of action on the basis that these statutes are preempted by federal law. Plaintiffs oppose the motion.

Movants were required to establish either that the Labor Law causes of action are facially insufficient (*see 298 Humboldt, LLC, v Torres*, 197 AD3d 1081, 1083 [2d Dept 2021], *quoting Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]) or proffer evidence which flatly contradicts the legal conclusions and factual claims contained in the complaint (*see id.*; *Kantrowitz & Goldhamer, P.C. v Geller*, 265 AD2d 529 [2d Dept 1999]). In assessing facial sufficiency, the allegations contained in the complaint must be presumed to be true, liberally construed and a plaintiff must be accorded every possible favorable inference (*see Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46 [2016]; *Palazzolo v Herrick, Feinstein, LLP,* 298 AD2d 372 [2d Dept 2002]; *Schulman v Chase Manhattan Bank,* 268 AD2d 174 [2d Dept 2000]). In that context, "the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). As to evidentiary based motions, in the uncommon circumstance the evidence reaches the requisite threshold, the court "must determine whether the proponent of the pleading has a cause of action, not whether she has stated one" (*Kantrowitz & Goldhamer, P.C. v Geller*, *supra*; *see also Lawrence v Miller*, 11 NY3d 588, 595 [2008]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635-636 [1976]).

The Supremacy Clause provides that the laws of the United States "shall be the supreme Law of the Land[,] . . . anything in the Constitution or Laws of any State to the Contrary notwithstanding" (U.S. Const. art. VI, cl. 2). "As a general matter, 'the United States Supreme Court has identified three types of preemption: (1) 'express preemption,' where Congress explicitly defines the extent to which its enactment preempts state law, (2) 'field preemption,' where Congress regulates a field so pervasively that an intent to occupy the field exclusively may be inferred, and (3) 'conflict preemption,' where the state and federal law actually conflict so that it is impossible for a party to simultaneously comply with both, or the state law stands as an obstacle to the execution of the full purposes and objectives of Congress'" (*Matter of Petralia v New York State Dept. of Labor*, 191 AD3d 1466, 1468 [4th Sept 2021], *citing Bantum v American Stock Exch., LLC*, 7 AD3d 551, 552 [2d Dept 2004]).

"It is 'never assumed lightly that Congress has derogated state regulation, but instead [courts] have addressed claims of pre-emption with the starting presumption that Congress does not intend to supplant state law'" (*Balbuena v IDR Realty LLC*, 6 NY3d 338, 356 [2006], *citing New York State Conference of Blue Cross & Blue Shield Plans v Travelers Ins. Co.*, 514 US 645, 654 [1995]). This presumption against preemption is "especially strong" when conflicts arise with the long-standing right of the states to regulate employment relationships within their borders (*see New York Hosp. Med. Ctr. of Queens v Microtech Contr. Corp.*, 98 AD3d 1096, 1099 [2d Dept 2012]).

Here, Defendants rely on "field preemption" to support their assertion that Plaintiffs' Labor Law causes of action fail. Under this concept, state law is supplanted "if federal law so thoroughly occupies a legislative field 'as to make reasonable the inference that Congress left no room for the states to supplement it'" (*Cipollone v Liggett Group*, 505 US 504, 516 [1992],

quoting Fidelity Fed. Sav. & Loan Assn. v De la Cuesta, 458 US 141, 153 [1982]). More specifically, "[t]he essential field preemption inquiry is whether the density and detail of federal regulation merits the inference that any state regulation within the same field will necessarily interfere with the federal regulatory scheme" (*Nat'l Fedn. of the Blind v United Airlines, Inc.*, 813 F3d 718, 734 [9th Cir 2016]). Before reaching this question, a court must initially "delineate the pertinent regulatory field" and then "survey the scope of the federal regulation within that field" (*id.*).

Plaintiffs and Defendants appear to agree that the field at issue is the wages and hours of railroad employees. To the extent Plaintiffs assert that the field is employees of intrastate, rather than interstate, railroads, that distinction does not hold. Railroads are a "quintessentially interstate business" (*CSX Transp., Inc. v Healey*, 861 F3d 276, 278 [1st Cir 2017]) and its employees are, therefore, considered a class without geography despite that they may work exclusively intrastate (*see Haider v Lyft, Inc.*, 2021 U.S. Dist. LEXIS 62690 at *3 [SDNY 2021]).

With respect to the railroad industry generally, Congress has repeatedly recognized the need for comprehensive federal oversight of the railroads which is well into its second century (*see United Transp. Union v Long Island R.R. Co.*, 455 US 678, 687, [1982]). The laws enacted were described by one court as "touch[ing] on nearly every aspect of the railway industry, including property rights, shipping, labor relations, hours of work, safety, security, retirement, unemployment, and preserving the railroads during financial difficulties" (*Wis. Cent., Ltd. v Shannon,* 539 F3d 751, 762 [7th Cir 2008]).

Among the relevant federal legislation in this area are the Railway Labor Act[1] ("RLA"), the Hours-of-Service Act[2] ("HSA"), the Adamson Act[3] and the Federal Railroad Safety Act[4] ("FRSA"). The RLA was "enacted to promote stability in labor-management relations in the industry and established a mandatory arbitral mechanism to resolve, inter alia, disputes arising 'out of the interpretation or application of [collective bargaining] agreements concerning rates of pay, rules, or working conditions'" (*CONRAIL v Hudacs*, 223 AD2d 289, 291 [3d Dept 1996], *affd.* 90 NY2d 958 [1997]). The HSA was first enacted in 1907 and has long history of modifications, but its core purpose remains unchanged, to wit regulation of hours worked by railroad employees (*see Fowler v Union Pac. R.R. Co.*, 2018 U.S. Dist. LEXIS 231699 [CD Ca 2018]). The Adamson Act, first instituted in 1916, permanently established an eight-hour day as the standard for setting compensation for railroad worker, but it "left the amount and other details of compensation to private negotiations following a temporary wage freeze" (*id.*). Lastly, the FRSA, implemented in 1970, had as its purpose "to promote safety in every area of railroad operations and to reduce railroad-related accidents and incidents." (49 U.S.C. § 20101). A quarter-century later, the HSA, along with other railroad safety statutes, were combined into the FRSA.

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[1] 45 USC § 151, *et seq.*
[2] 59 Cong. Ch. 2939, Pub. L. No. 59-274, 34 Stat. 1415 [March 4, 1907]).
[3] Codified in 49 USC § 28301.
[4] Codified in 49 USC § 20101, *et seq.* The HSA, and Adamson Act were merged into the FRSA (*see* A. Pub. L. No. 103-272, § 6(a), 108 Stat. 1378; H.R. Rep. 103-180 [1993]).

Nevertheless, it is settled that the federal government's oversight of railroads is not completely exclusive and numerous state statutes, especially those related to the "state's historic police powers over occupational health and safety issues" are recognized as appropriate (*New York Hosp. Med. Ctr. of Queens v Microtech Contr. Corp.*, supra; *see also Matter of Pascazi v Gardner*, 106 AD3d 1143, 1145 [3d Dept 2013]). For instance, the United States Supreme Court observed in *Terminal R. Asso. v Brotherhood of R. Trainmen*, 318 US 1, 6 [1943] that concerning interstate transportation, "[s]tate laws have long regulated a great variety of conditions in transportation and industry, such as sanitary facilities and conditions, safety devices and protections, purity of water supply, fire protection, and innumerable others". Consequently, that Court held that "the enactment by Congress of the Railway Labor Act was not a preemption of the field of regulating working conditions themselves" and sustained the viability of an order of the Illinois Commerce Commission which required railroads to provide cabooses on all runs within that state.

Therefore, it cannot be concluded that all state legislation related to railroads is expressly preempted. Indeed, none of the foregoing legislation, nor any other cited by Defendants, sets minimum and/or overtime pay for railroad employees. Indeed, the Supreme Court has recognized that both the RLA and the Adamson Act do not provide for government regulation of wages for railroad employees (*see Terminal R. Asso. v Brotherhood of R. Trainmen*, supra ["the Railway Labor Act . . . does not undertake governmental regulation of wages, hours, or working conditions."]; *see also Wilson v New*, 243 US 332, 345-346 [1917]).

Defendants appear to recognize this state of affairs and instead rely on a theory of implied field preemption recognized by the Supreme Court in *NLRB v NASHFINCH*, 404 US 138, 144 [1971]. In a later case, the Supreme Court explained that in a situation where the purpose of Congress' legislation evidences an intent to create a perpetual regulatory scheme over a field, "a federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left *un*regulated, and in that event would have as much pre-emptive force as a decision *to* regulate" (*Ark. Elec. Coop. Corp. v Ark. Public Serv. Comm'n*, 461 US 375, 384 [1983]. In other words, "Congress can impliedly create a 'federally mandated free-market' area that must be left unregulated by any state enactments" (*Knox v Brnovich*, 907 F3d 1167, 1175 [9th Cir 2018], *citing*, *P.R. Dep't. of Consumer Affairs v Isla Petroleum Corp.*, 485 US 495, 500 [1988]). However, such a deregulated zone is "decidedly untypical" and is not "created subtly." (*id.*).

Evidence exists, in relation to the HRA, RLA and the Adamson Act, that Congress intended to leave labor and management to their own devises on the issue of wages of railroad employees, hours and working conditions. In *Erie R. Co. v People of State of New York*, 233 US 671, 683 [1914], the Court stated that the restrictions on hours worked by railroad employees "admits of no supplement". In *Terminal R. Asso. v Brotherhood of R. Trainmen*, supra the Supreme Court stated that "[s]o far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for". Similarly, in *Wilson v New*, 243 US 332, 345-346 [1917], the Court averred that the Adamson Act left "the employers and employees free as to the subject of wages to govern their relations by their own agreements".

Notwithstanding the foregoing, this Court cannot conclude that Congress clearly intended that an arbitrational mechanism supplant all substantive minimum wage protections enacted by the states. Much of this legislation, and the Supreme Court cases initially interpreting it, were enacted, and issued long before minimum wages existed[5]. The prevailing view at that time, and for decades before, was that allowing the parties to freely bargain the price of labor was a more enlightened theory when compared with price caps and maximum wage limits that previously existed in English statutes (*see United States v Martin*, 94 US 400, 403 [1877]). Thus, in this paradigm, leaving wages subject to a bargained process supports a view that Congress intended to avoid government caps on wages rather than the imposition of minimum salary.

In that vein, the Supreme Court observed of the RLA that despite railroads being a federal concern, "it cannot be that the minimum requirements laid down by state authority are all set aside" (*Terminal Assn. v Trainmen*, supra). More recently, the Supreme Court stated that "no proposed interpretation [of the RLA] demonstrates a clear and manifest congressional purpose to create a regime that broadly pre-empts substantive protections extended by the States, independent of any negotiated labor agreement" (*Hawaiian Airlines v Norris*, 512 US 246, 256 [1994]). This finding was adopted by the New York State Court of Appeals in *CONRAIL v Hudacs*, supra, which held that the RLA did not preempt enforcement of Labor Law §162, a statute that mandates meal periods for a variety of workers. In reaching its conclusion, the Appellate Division, Third Department, whose opinion was adopted by the Court of Appeals, reasoned that "we would hardly be expected to hold that the price of the federal effort to protect the peace and continuity of commerce has been to strike down state sanitary codes, health regulations, factory inspections, and safety provisions for industry and transportation" (*CONRAIL*, 223 AD2d at 292). Analogous authority for sustaining state minimum labor standards created by a statute that confers that an independent right has been found with respect to the Telecommunications Act and the National Labor Relations Act (*see Matter of Pascazi v Gardner*, 106 AD3d 1143 [3d Dept 2013]; *General Elec. Co. v New York State Dep't of Labor*, 891 F2d 25 [2nd Cir 1989]).

This Court also cannot subscribe to Defendants' argument that Congress intended to supplant every state's minimum wage laws merely by implication. State minimum wage laws exist to protect workers, "by forbidding employment "at wages insufficient to provide adequate maintenance for themselves and their families," which, when it occurs, 'threatens the health and well-being of the people of this state and injures the overall economy'" (*Int'l Franchise Ass'n v City of New York*, 193 AD3d 545, 546 [1st Dept 2021][internal citations omitted]). None of the above federal legislation expressly forbids state intrusion in the area of wages nor is any conspicuous conflict with Congress' legislative edicts and enforcement of this state's minimum wage laws apparent. Absent same, railroad employees unrepresented by a labor entity and, therefore, without the ability to effectively engage in collective bargaining, are left without any

[5] The federal minimum wage was not codified until enactment of the Fair Labor Standards Act of 1938 (*see* 29 USC §201, *et seq*; *Central Forwarding v ICC*, 698 F2d 1266, 1277 [5th Cir 1983]). New York State's first minimum wage law of general application was enacted in 1960 (Labor Law Article 19, L 1960, ch 619, eff Apr 18, 1960). Earlier iterations of the minimum wage law were industry dependent (*see eg* Article 19 of the Labor Law, Laws of 1933, c. 584).

recourse whatsoever on the issue of wages. This Court cannot conclude Congress intended this laissez-faire scheme by design.

The Court in *R.J. Corman R.R. Company/Memphis Line v Palmore*, 999 F2d 149 [6th Cir 1993], a case heavily relied upon by Defendants, acknowledged as true that field preemption in this area left "plaintiff's employees without any overtime wage protection either in the form of the state statute or a collective bargaining agreement". In response, however, that Court effectively offered what amounted to a judicial shrug of the shoulders and said, "Plaintiffs' employees, like all railroad employees, may bargain collectively under the RLA to resolve disagreements in the labor relationship" (*id at* 154). This statement ignores the imbalance of leverage favoring employers in such negotiations and that without recognition of this state's wage laws, the parties could, in theory, reach an agreement of wages amounting to indentured servitude. This Court disagrees with the findings in that case, as well as in *Wis. Cent., Ltd. v Shannon*, 539 F3d 751 [7th Cir 2008], and since they are not binding authority, this Court respectfully declines to follow their holdings. Defendant's reliance on *Erie R. Co. v People of State of New York*, 233 US 671 [1914] is misplaced as an actual conflict between New York's regulations of hours worked and the HSA existed.

Accordingly, it is

ORDERED that Defendant's motion pursuant to CPLR §3211[a][1] and [7] to dismiss Plaintiff's New York Labor Law causes of action on the basis that these statutes are preempted by federal law is denied.

10/28/2022
DATE

FRANCIS KAHN, III, A.J.S.C.
HON. FRANCIS A. KAHN III J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION	
	☐	GRANTED	☒ DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐ REFERENCE