

Burger King Dodges Workers' Consolidated No-Poach Suit

By **Anne Cullen**

Law360 (March 25, 2020, 2:05 PM EDT) -- A Florida federal judge has sent Burger King employees back to the drawing board on their consolidated no-poach case against the popular fast-food chain, finding Tuesday that those staffers hadn't shown the various Burger King locations were distinct enough enterprises to break antitrust laws.

Former and current Burger King employees alleged that the corporation **illegally barred its franchises**, which operate thousands of nationwide locations, from hiring another franchisee's employees, hindering those workers' career opportunities.

U.S. District Judge Jose E. Martinez temporarily tossed the case Tuesday, finding that the separate restaurant locations weren't autonomous enough to be able to restrain trade under federal antitrust laws.

"To view [Burger King] and its franchisees as independent decision-makers and competitors relative to employment decisions, as plaintiffs urge, is to parcel out one component of a broader symbiotic relationship, which is entirely predicated on uniform operation," Judge Martinez said.

Although franchisees have their own ability to hire and fire personnel, the judge said that isn't enough. "That a franchisee retains some residual economic autonomy with respect to employment decisions is insufficient to convert it into a separate economic actor," he said.

Despite Tuesday's win, Burger King has consistently been in hot water over the no-poach language in its franchise agreements, **agreeing earlier this month** to get rid of the provision in response to pressure from state attorneys general.

However, the former and current Burger King employees behind the Florida litigation are seeking damages on behalf of all individuals who worked for the chain in the U.S. over the past decade while the language was in place. The consolidated case stems from three proposed class action suits filed against Burger King over the no-poach provision in late 2018, which Judge Martinez agreed to consolidate in January.

The dismissal doesn't necessarily spell the end of the case, as Judge Martinez left the door open for the Burger King staffers to file a retooled complaint. However, if they'd prefer to take the issue to the appellate level, he asked that they let him know in a week so he can hand down a final appealable order.

A lawyer for Burger King said they are pleased with the decision as well as the judge's conclusion that the former employees "have not sufficiently alleged that [Burger King] and its franchisees are separate economic actors for antitrust purposes."

Counsel for the employees did not immediately respond to a request for comment Wednesday.

Burger King is represented by Luis E. Suarez, Mark Heise and Patricia Melville of Heise Suarez Melville PA and Stuart H. Singer and Carl E. Goldfarb of Boies Schiller Flexner LLP.

The former and current employees are represented by Podhurst Orseck PA, Kessler Topaz Meltzer & Check LLP, McCune Wright Arevalo LLP, Robbins Geller Rudman & Dowd LLP, Radice Law Firm PC, Scott & Scott Attorneys at Law LLP, Lief Cabraser Heimann & Bernstein LLP, Gibbs Law Group LLP and Sampson Dunlap LLP.

The case is Arrington v. Burger King Worldwide Inc. et al., case number 1:18-cv-24128, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Christopher Crosby and Braden Campbell. Editing by Stephen Berg.