

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Nos. 16-1099, 16-1159

AT&T MOBILITY SERVICES, LLC

Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD

Respondent/Cross-Petitioner

EUDORA BROOKS, JUAN FIGUERO

Intervenors

**UNOPPOSED MOTION OF THE
NATIONAL LABOR RELATIONS BOARD
TO REMOVE THIS CASE FROM ABEYANCE AND SUMMARILY
GRANT THE COMPANY’S PETITION FOR REVIEW AND DENY THE
BOARD’S CROSS-APPLICATION FOR ENFORCEMENT OF ITS ORDER**

To the Honorable, the Judges of the United States Court
of Appeals for the Fourth Circuit:

The National Labor Relations Board, by its Deputy Associate General
Counsel, respectfully moves this Court to remove this case from abeyance and
summarily grant the Company’s petition for review, and deny the Board’s cross-
application for enforcement. In support of this motion, the Board shows:

1. In the Decision and Order under review, the Board found that AT&T
Mobility Services, LLC (“the Company”) had violated the National Labor

Relations Act by maintaining an arbitration agreement barring employees from concerted­ly pursuing work­related claims in any forum, arbitral or judicial. In doing so, the Board applied the rule set forth in *Murphy Oil, USA, Inc.*, 361 NLRB 774 (2014), *enforcement denied in relevant part*, 808 F.3d 1013 (5th Cir. 2015), *cert. granted*, No. 16-307 (Jan. 13, 2017).

2. After briefing and argument, the Court placed this case in abeyance on February 2, 2017, pending the Supreme Court’s decision in *Epic Systems Corp. v. Lewis* (No. 16-285), *Ernst & Young, LLP v. Morris* (No. 16-300), and *NLRB v. Murphy Oil, USA, Inc.* (No. 16-307).

3. On May 21, 2018, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, No. 16-285, 2018 WL 2292444 (U.S. May 21, 2018), holding that employers may lawfully maintain arbitration agreements that bar employees from concerted­ly pursuing work­related legal claims.¹ The Board acknowledges that under that decision, the Decision and Order in this case is no longer enforceable. The Board therefore consents to the summary grant of the Company’s petition for review, and the summary denial of the Board’s cross­application for enforcement, of the Board’s Order.

4. Counsel for the Company and for the Intervenor do not oppose this motion.

¹ The Court issued *Epic Systems* together with *Murphy Oil*, No. 16-307, and *Ernst & Young LLP v. Morris*, No. 16-300.

WHEREFORE, the Board respectfully moves this Court to remove this case from abeyance, and summarily grant the Company's petition for review and deny the Board's cross-application for enforcement of the Board's Order.

Respectfully submitted,

/s/Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street SE
Washington, DC 20570

Dated at Washington, DC
this 23rd day of May 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 321 words of proportionally spaced, 14-point type, and that the word-processing system used was Microsoft Word 2010.

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
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CERTIFICATE OF SERVICE

I certify that on May 23, 2018, the foregoing motion was filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system, and that all counsel are registered CM/ECF users.

s/ Linda Dreeben
Linda Dreeben
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