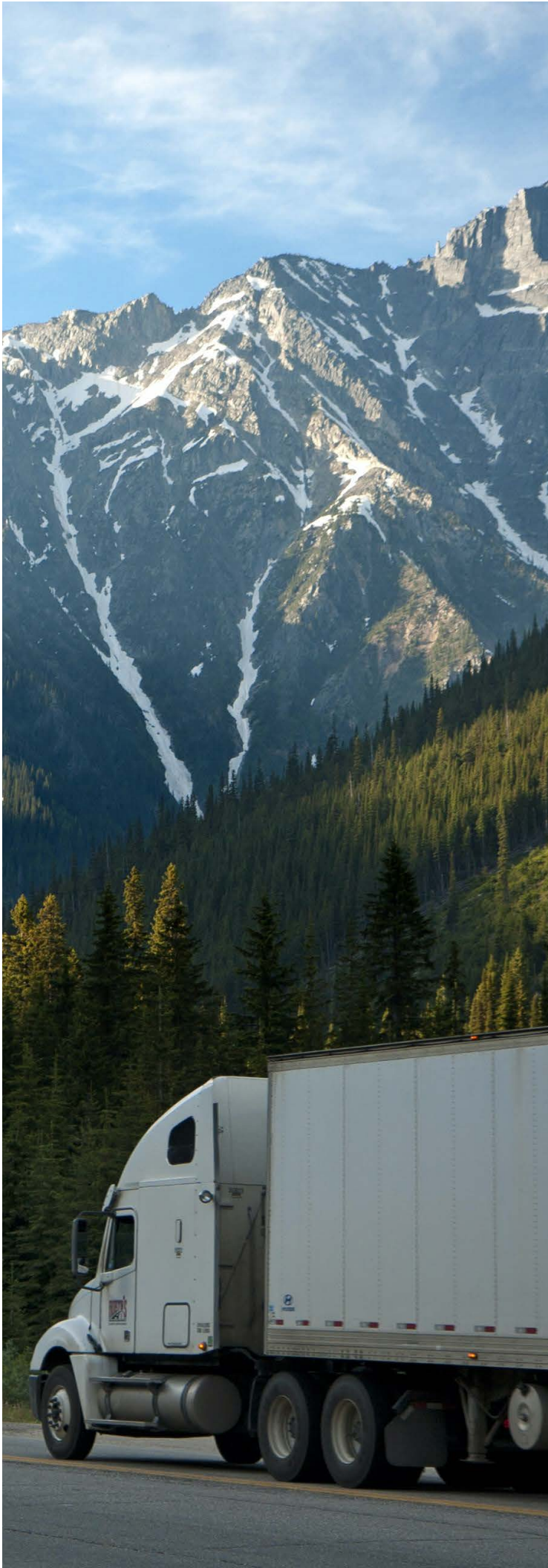
Eighth Circuit Puts Boundaries on Driver Recruitment from a Competitor

BY FREDRIC MARCINAK

For years now, the shortage of qualified, trained, and skilled drivers has been identified by motor carriers as one of the top ten issues the industry faces. To address the issue, many carriers have invested in recruitment and training programs and have sought ways to protect their investment through contractual restrictions on the ability of recruited and trained drivers to leave for a different carrier and for rival carriers to hire away these same drivers. In a decision that is instructive both for carriers looking to protect their investment in drivers and for companies looking to hire drivers away from rivals, the federal Eighth Circuit Court of Appeals, whose jurisdiction includes Minnesota, Iowa, Missouri, Arkansas, Nebraska, and the Dakotas, has now weighed in on how far companies can go in restricting drivers' ability to jump ship (or truck?) to a rival.

The entry burdens to a career as a long haul truck driver are significant. A driver must obtain a commercial driver's license ("CDL"), normally through a driver-training program, which doesn't come cheap. As many large companies do, CRST Expedited, Inc. ("CRST") developed its own driver-training program in which it advances the cost of tuition and other expenses in exchange for the driver's agreement to work for CRST for a specified period of time. Specifically, prior to the start of training, CRST requires its drivers to sign a pre-employment agreement in which the driver agrees that the costs of training are an advance, and the driver must accept an employment contract with CRST if offered. Under the employment contract, the driver agrees to work for CRST for at least ten months ("Restrictive Term"). The driver also agrees to a non-compete provision: the driver will not work for any CRST competitor for the remainder of the Restrictive Term if he or she is discharged or leaves employment prior to the end of the Restrictive Term. During the Restrictive Term, CRST compensates the driver at a reduced rate so as to partially recoup the costs of the training program. Upon the conclusion of the Restrictive Term, the employment becomes at-will and the drivers are compensated at the market rate for long-haul truck drivers.

Some 167 CRST drivers left CRST to join rival TransAm Trucking, Inc. ("TransAm") while still within the Restrictive Term. During the employment verification process required by 49 C.F.R. § 391.23, CRST told TransAm that



the drivers were under non-competes that prohibited them from working for another trucking company. CRST also sent several follow-up letters, warning TransAm that CRST would not release its drivers from their contracts and citing another CRST lawsuit in which a different company had been enjoined from interfering with similar CRST contracts. Finally, in May 2014, CRST sent a cease-and-desist letter to TransAm. CRST says that, even after receiving the several letters detailing the drivers' contractual obligations with CRST, TransAm continued to hire its drivers.

In April 2016, CRST sued TransAm, alleging intentional interference with a contract, intentional interference with a prospective economic advantage, and unjust enrichment. The trial court in Iowa granted summary judgment for TransAm, concluding that, while the drivers were under a valid non-compete contract with CRST that TransAm knew about, there was no evidence that TransAm's actions induced the drivers to breach that contract or that the drivers would not have broken their contracts without TransAm's involvement.

On appeal, the Eighth Circuit Court of Appeals disagreed, holding that CRST presented substantial evidence that TransAm entered into agreements with the drivers not only with the knowledge that the drivers were under contract with CRST, and thus could not perform both contracts, but also with knowledge that its driver agreements provided for a higher rate of pay than provided for under the CRST-driver contracts. This knowledge of difference in pay—an inducement to the drivers to break their contracts—was crucial to the appellate court's decision. As it noted:

> We reject CRST's contention that any prospective employer offering terms it knows are better than an employee's fixed-term contract with his present employer commits tortious interference with that contract. The Restatement draws a clear distinction between contracts that include non-compete provisions and those that do not. With regard to an employee subject to a contract that does not include a non-compete provision, a competitor is "free, for his own competitive advantage, to obtain the future benefits for himself by causing the termination." Restatement (Second) of Torts § 768 cmt. i. The employer "may offer better contract terms, as by offering an employee of the plaintiff more money to work for him . . . without liability." Id. However, in circumstances in which an employee is subject to a non-compete provision, "a defendant engaged in the same business might induce the employee to quit his job, but he would not be justified in engaging the employee to work for him in an activity that would mean violation of the contract not to compete." Id. Based on this distinction, the intentional interference with a contract inquiry asks not merely whether TransAm induced the drivers to work for it by offering superior terms. Instead, the inquiry is more properly framed as whether TransAm intentionally induced the drivers to work for TransAm, by offering superior terms, in an activity that would mean violation by the drivers of the non-compete provision, and thus intentionally and improperly interfered with the CRST contract.

Thus, the Eighth Circuit reversed the dismissal of CRST's claims and sent the case back to the trial court for trial.

The *CRST* case offers lessons in contracting and employment practices for all those in the transportation industry. It strengthens the employer's ability to protect its investment in recruiting and training good employees. At the same time, following *CRST*, a prospective employer must tread cautiously where it knows the prospective employee is under a non-compete with a competitor. It's important to keep in mind that these employment and contract matters are governed by state law, and the Eight Circuit was interpreting Iowa law in its decision. Different states enforce non-compete agreements in different ways. The Eight Circuit found CRST's non-compete provision was not so restrictive as to be void under Iowa law, but the same provision may have been struck down under the law of another state. The lesson for trucking companies is that they should take time and care in drafting non-compete provisions that are legally compliant and that they should make sure they understand the ramifications of hiring employees away from a competitor.