

19 December 2018

PRESS SUMMARY

Uber BV & Ors v Aslam & Ors [2018] EWCA Civ 2748
On appeal from UKEAT/0056/17/DA

Judges: The Master of the Rolls (Sir Terence Etherton), Lord Justice Underhill (Vice-President, Civil Division, Court of Appeal), Lord Justice Bean

Uber has a smartphone app by which passengers can book rides from drivers who also have the app. The drivers own their own cars and are free to choose when they make themselves available to accept bookings. At the time of the original hearing in this case in 2016, there were about 30,000 Uber drivers operating in the London area, and 40,000 in the UK as a whole. The organisation has around two million passengers registered to use its services in London

The proceedings which give rise to these appeals were brought by Uber drivers against companies in the Uber group claiming holiday pay under the Working Time Regulations 1998 and under-payments of “wages” by reference to the National Minimum Wage Regulations 1999. One of the claimants also claims that he has been subjected to a detriment for being a whistleblower contrary to Part V of the Employment Rights Act 1996. The appeal is concerned only with Uber drivers in London.

In order to bring their claims it is necessary for the drivers to establish that they are “workers” within the meaning of the Regulations and the Act. The Employment Tribunal held a preliminary hearing to decide that question; and also, if the drivers were workers, the period during which they were working, which is necessary for the calculation of any holiday pay due and of the national minimum wage. It held (1) that the drivers were workers, employed by Uber London Ltd; and (2) that they were to be regarded as working during any period when they were within their territory (i.e. London), had the Uber app switched on and were ready and willing to accept trips. The Employment Appeal Tribunal upheld that decision.

The Court of Appeal, by a majority (the Master of the Rolls and Lord Justice Bean), has upheld the decisions of the Employment Tribunal and the Employment Appeal Tribunal. Subject to appeal, the case will now go back to the Employment Tribunal for the claims themselves to be heard.

The essential question as regards worker status was whether, as the drivers argued, Uber contracts with the passengers to provide driving services, which the drivers perform for it; or whether, as Uber argued, it acts only as an intermediary, providing booking and payment services, and the drivers drive the passengers as independent contractors. The written contractual terms say the latter; but the majority hold that they do not reflect the practical reality of the relationships and can therefore be disregarded in accordance with the principle established in an earlier Supreme Court decision called *Autoclenz Ltd v Belcher* [2011] UKSC 41. They approve the reasoning of the Employment Tribunal, which relied on a number of features of Uber’s working arrangements as being inconsistent with the driver having a direct

contractual relationship with the passenger: judgment paras. 71-97. Lord Justice Underhill, dissenting, would have held that there was no inconsistency between the written terms and the working arrangements: those arrangements were not essentially different from those commonly applying where taxi and minicab owner-drivers are booked through an intermediary: paras. 135-154.

As regards the period during which drivers are to be regarded as working, drivers are free whether to switch the app on at all and when it is switched on they have the right to choose whether to accept any particular trip offered. However Uber has the right to disconnect drivers from the app for a period if they turn down offers too frequently. The majority hold that in those circumstances drivers are under a positive obligation to be available for work while the app is on, and that that amounts to “work” for the purpose of the Regulations: paras. 99-104. Lord Justice Underhill would have held that drivers should only be treated as working from the moment that they accept a particular trip: paras. 156-163.

The Court of Appeal has given Uber permission to appeal to the Supreme Court.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments/>