



19 February 2021

PRESS SUMMARY

Uber BV and others (Appellants) v Aslam and others (Respondents)

[2021] UKSC 5

On appeal from [2018] EWCA Civ 2748

JUSTICES: Lord Reed (President), Lord Hodge (Deputy President), Lady Arden, Lord Kitchin, Lord Sales, Lord Hamblen, Lord Leggatt

BACKGROUND TO THE APPEAL

This appeal concerns the employment status of private hire vehicle drivers who provide their services through the Uber smartphone application (the “**Uber app**”). The main question raised is whether an Uber driver is a “worker” for the purposes of employment legislation which gives “workers” rights to be paid at least the national minimum wage, to receive annual paid leave and to benefit from certain other protections. The Supreme Court also considers the related question of what time counts, if drivers are “workers”, as working time for the purpose of the relevant rights.

Uber BV is a Dutch company which owns the technology behind the Uber app. Uber London Ltd is a UK subsidiary licensed to operate private hire vehicles in London. The claimants, Mr Aslam and Mr Farrar, at the relevant times were licensed to drive private hire vehicles in London and did so using the Uber app. Their claim was brought in the employment tribunal as a test case to establish their employment status. At the time of the tribunal hearing in 2016, the number of Uber drivers operating in the UK was estimated to be around 40,000, of whom around 30,000 were operating in the London area.

The definition of a “worker” in section 230(3) of the Employment Rights Act 1996 and other relevant legislation includes anyone employed under a contract of employment but also extends to some individuals who are self-employed. In particular, the definition includes an individual who works under a contract “*whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual*”.

The employment tribunal found that Mr Aslam and Mr Farrar satisfied this test and worked under worker’s contracts for Uber London. The Employment Appeal Tribunal and the Court of Appeal (by a majority) dismissed Uber’s appeals.

JUDGMENT

The Supreme Court unanimously dismisses Uber’s appeal. Lord Leggatt gives the sole judgment. The original panel of seven Justices included Lord Kitchin who later fell ill. As it was uncertain when he would return to work, the panel has been reconstituted as a panel of six Justices.

REASONS FOR THE JUDGMENT

Is a driver a “worker”?

Uber argued that Uber BV acted solely as a technology provider with its subsidiary (Uber London in this case) acting as a booking agent for drivers who are approved by Uber London to use the Uber app. Uber argued that, when a ride is booked through the Uber app, a contract is thereby made directly between the driver and the passenger whereby the driver agrees to provide transportation services to the passenger [1, 43]. The fare is calculated by the Uber app and paid by the passenger to Uber BV, which deducts part (20% in these cases) and pays the balance to the driver. Uber characterises this process as collecting payment on behalf of the driver and charging a “service fee” to the driver for the use of its technology and other services. To support its case, Uber relied on the wording of its standard written contracts between Uber BV and drivers and between the Uber companies and passengers (summarised at [22 - 29]). Uber also emphasised that drivers are free to work when they want and as much or as little as they want. In summary, Uber argued that drivers are independent contractors who work under contracts made with customers and do not work for Uber.

The Supreme Court disagrees. As on the facts there was no written contract between the drivers and Uber London, the nature of their legal relationship had to be inferred from the parties’ conduct [45 - 46] and there was no factual basis for asserting that Uber London acted as an agent for drivers [50 - 56]. The correct inference was that Uber London contracts with passengers and engages drivers to carry out bookings for it [54 - 56]. In any event, it is wrong in principle to treat the written agreements as a starting point in deciding whether an individual is a “worker” [57, 76]. The Supreme Court considers and explains its previous decision in *Autoclenz Ltd v Belcher* [2011] UKSC 41 [68 - 69]. The correct approach is to consider the purpose of the relevant employment legislation [70]. That purpose is to give protection to vulnerable individuals who have little or no say over their pay and working conditions because they are in a subordinate and dependent position in relation to a person or organisation which exercises control over their work [71 - 76]. The legislation also precludes employers, frequently in a stronger bargaining position, from contracting out of these protections [79 - 82].

The judgment emphasises five aspects of the findings made by the employment tribunal which justified its conclusion that the claimants were working for and under contracts with Uber [93].

First, where a ride is booked through the Uber app, it is Uber that sets the fare and drivers are not permitted to charge more than the fare calculated by the Uber app. It is therefore Uber which dictates how much drivers are paid for the work they do [94]. Second, the contract terms on which drivers perform their services are imposed by Uber and drivers have no say in them [95]. Third, once a driver has logged onto the Uber app, the driver’s choice about whether to accept requests for rides is constrained by Uber [96]. One way in which this is done is by monitoring the driver’s rate of acceptance (and cancellation) of trip requests and imposing what amounts to a penalty if too many trip requests are declined or cancelled by automatically logging the driver off the Uber app for ten minutes, thereby preventing the driver from working until allowed to log back on [97]. Fourth, Uber also exercises significant control over the way in which drivers deliver their services. One of several methods mentioned in the judgment is the use of a ratings system whereby passengers are asked to rate the driver on a scale of 1 to 5 after each trip. Any driver who fails to maintain a required average rating will receive a series of warnings and, if their average rating does not improve, eventually have their relationship with Uber terminated [98 - 99]. A fifth significant factor is that Uber restricts communications between passenger and driver to the minimum necessary to perform the particular trip and takes

active steps to prevent drivers from establishing any relationship with a passenger capable of extending beyond an individual ride [100].

Taking these factors together, the transportation service performed by drivers and offered to passengers through the Uber app is very tightly defined and controlled by Uber. Drivers are in a position of subordination and dependency in relation to Uber such that they have little or no ability to improve their economic position through professional or entrepreneurial skill. In practice the only way in which they can increase their earnings is by working longer hours while constantly meeting Uber's measures of performance [101]. The Supreme Court considers that comparisons made by Uber with digital platforms which act as booking agents for hotels and other accommodation [103 - 108] and with minicab drivers [109 - 117] do not advance its case. The drivers were rightly found to be "workers" [119].

When are the drivers "working" for Uber?

The Supreme Court also holds that the employment tribunal was entitled to find that time spent by the claimants working for Uber was not limited (as Uber argued) to periods when they were actually driving passengers to their destinations, but included any period when the driver was logged into the Uber app within the territory in which the driver was licensed to operate and was ready and willing to accept trips. [136 - 137].

References in square brackets are to paragraphs in the judgment

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: <http://supremecourt.uk/decided-cases/index.html>