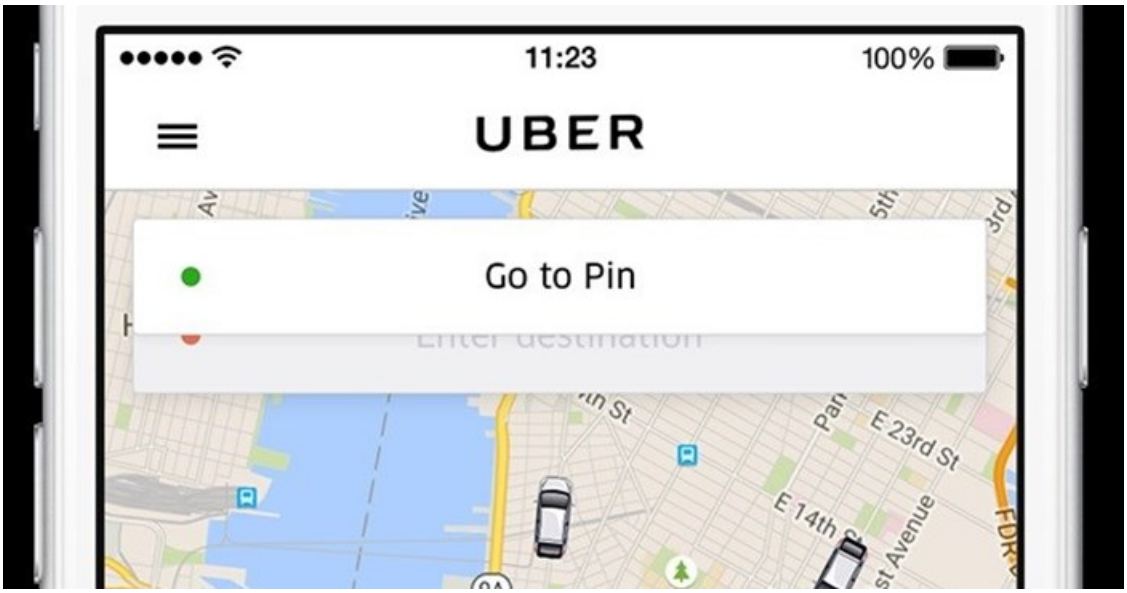
However you word it, Uber is a taxi company... UK ruling says

By Sharon Snell

8 Dec 2016

New technology has been disrupting traditional models of doing business for many years and legislation has struggled to keep up. It often falls to the courts to develop the law in this regard. Uber may have disrupted the taxi industry with their self-employment scheme, but they failed to have any effect on the UK Employment Tribunal.



In the landmark judgment of Aslam & Farrar vs Uber, the UK Employment Tribunal ruled that Uber runs a transportation business and employs driver to that end.

Partnership agreement dismissed

The tribunal “pierced the contract veil” in a sense and submitted that Uber had gone through great lengths aided by the use of “twisted” legalese in their contracts and “fictions” in their documentation to uphold their incorrect assertion that they were only a technology company.

The claim was made against Uber by some of their drivers, who alleged a failure to pay minimum wages, failure to provide paid leave and detrimental treatment on whistleblowing grounds. It was brought in terms of the UK Employment Rights and Minimum Wage Acts. Their case was that in a number of different ways Uber instructs, controls and manages their drivers.

Uber denied that the claimants were at any material times “workers” entitled to the protection of these legislations. Uber had in place a “partner” agreement with its drivers which provided that the agreement was governed by the laws of the Netherlands. In the event of a dispute, the agreement provided that these should be referred to arbitration to the International Chamber of Commerce Arbitration.

In October 2015, Uber revised the terms of the “partner” agreement without consulting or discussing it with drivers. Drivers were informed when logging into the app and had to accept the new terms and conditions before they could receive new customers.

The new terms stipulated that the Uber driver agree that a contract existed between the Uber driver and the passenger (whoever that may be). The tribunal disregarded these contracts on the basis that they were signed based on the unequal bargaining position between the parties.

Some of the behaviours of which the tribunal were scathing include:

- Most of the drivers were not English speaking and the tribunal found that the contracts contained “dense language couched in impenetrable prose”.
  Uber contract documentation was designed to reflect that the passenger had contracted directly with the driver and yet the Uber driver was never allowed to know the identity of the passenger or the destination of the passenger, or even the fee to be paid by the passenger.

  The driver never collects any fee from the passenger and the fee is paid to Uber. The tribunal held that the essential elements needed for a valid contract were not in place and the supposed contract between Uber driver and passenger were pure fiction, which bore no relationship to the real dealings and relationship between the parties; and

- The contract stated that Uber works for the drivers and yet this was far from true, the fact was that Uber recruited the drivers to operate is transportation business.

  The drivers did not market themselves to the world in general. Uber then submitted that if there was an employment agreement, the drivers do not have it with Uber London, but with the company with whom they contracted, which was Uber BV which was a Dutch company. The tribunal lifted the veil on the operations and found that for all purposes the Uber London company was the point of contact for the Uber drivers. It was found that Uber London recruits, instructs, controls, disciplines and if it deems appropriate dismisses drivers.

Working hours determination

The tribunal also looked at working hours and concluded that the period the Uber drivers travel from home to their agreed operating area, are not to be regarded as working hours.

The calculation of working hours will start when the Uber driver arrives for work to his area and switches on his application waiting for instruction, until the end of the day when he switches off the application. In terms of the way Uber operated, they required the drivers to be on standby “waiting time” to be available to service any bookings made. This was regarded as the start of working hours by the tribunal.

Will Uber appeal?

We will find out in due course whether Uber will appeal this decision. Whatever happens, Uber will have to accept that they are a taxi company which uses technology and not just a technology company that provides transport.

Their competitive edge was obtained in part from circumventing laws to which their competitors had to comply with. They will have to respect the labour laws of the country in which they operate. That is until they can get their driverless taxi model properly off the ground.

ABOUT SHARON SNELL

Sharon Snell holds a masters degree in law, and she is the Chief Executive Officer of the National Museum located in Bloemfontein.

- Green reporting will expose risky companies - 5 Jul 2017
- However you word it, Uber is a taxi company... UK ruling says - 8 Dec 2016
- SA banks and the new G7 cybersecurity guidelines - 7 Nov 2016
- Counting the cost of #FeesMustFall and other protests - 17 Oct 2016
- US insurer ordered to defend prescription drug lawsuit - 26 Sep 2016

View my profile and articles...