Case Number: 3319522/2019 (V)
3319596/2019 (V)

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
(1) Mr Shafqat Shah; and (2) Mr Samuel Adjei	**v**	United Travel Group Limited t/a 'Bounds Taxis'

Heard at: Norwich **On**: 26, 27, 28 and 29 April 2021

Before: Employment Judge Postle

Appearances
For both of the Claimants: Miss Malick, Counsel
For the Respondent: Mr Skudra, Counsel

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals
This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

RESERVED JUDGMENT

1. Both the Claimants are 'workers' within the meaning and definition of Section 230 of the Employment Rights Act 1996.

REASONS

1. Both Claimants make claims under the Working Time Regulations 1998 and Section 230(3)(b) of the Employment Rights Act 1996, claiming paid rest breaks and paid holiday on the grounds that they are truly workers and not self-employed.

2. The Claim is resisted by the Respondents on the grounds that they are self-employed contractors providing technology called 'iCabbie' for a fixed fee of £175 per week to enable the Claimants Drivers to receive passenger or private hire.

3. In this Tribunal we have heard evidence from both Claimants giving their evidence through prepared witness statements.

4. For the Respondents, although a number of witness statements were tendered, only Mr Wright, Director of the Respondent; Mr Russell, a Share Holder with the Respondent; Mr Ward and Mr Sanderson, both Drivers for the Respondent, actually gave live evidence all through prepared witness statements.

5. The Tribunal also had the benefit of a main Bundle consisting of 824 pages and a Supplemental Bundle consisting of 498 pages. It has to be said, in the Supplemental Bundle from pages 398 to the end it was impossible to read any of those documents, as was pointed out as the print was so small. Likewise, in the main Bundle, particularly page 373 through to page 503, again was impossible to read. It does beg the question by any objective assessment why those documents would have been put in the Bundle as clearly it was impossible with normal eyesight to read those documents. Furthermore, it is becoming increasingly of concern that Bundles for Hearing are now becoming almost unmanageable in terms of the extent and size of them in circumstances where the reality is, in the course of the Hearing, the vast majority of those documents no reference is made at all, as was in this case. Putting it bluntly, the Claimants' reading list consisted of no more than 20 pages and the Respondent referred to the Pleadings, the Witness Statement and the Agreed List of Issues.

6. The Tribunal also had the benefit of an opening submission on behalf of the Claimants together with one on behalf of the Respondent.

7. There were also written closing speeches on behalf of both Claimants and the Respondents for which I am grateful as they were helpful.

The Facts

8. Mr Shah, the First Claimant, is a Private Hire Driver. The Respondent is a Private Hire operator in the business providing transportation services to the public. The Claimant started work for the Respondent on 28 July 2011, has left the company on various occasions since that date and rejoined on 22 November 2016 and has been employed with the Respondents since that date.

9. It would appear this Claimant works for the Respondent on a regular basis from Monday to Saturday working quite long hours and the Claimant occasionally works on Sundays.

10. Mr Adjei, the Second Claimant, is also a Private Hire Driver and commenced his engagement with the Respondents on 6 February 2017. The Second Claimant clearly worked for the Respondents on a regular basis, Monday to Saturday, long hours and occasionally works on Sundays.

11. Each Claimant will start work each day by logging onto a system called iCabbie which is an App provided by the Respondent for a rental fee of £175 per week regardless of the hours worked and each Claimant ends their shift by logging off the App.

12. The Respondents promote the brand 'Bounds' and through the App iCabbie it requests for passenger transport services, they also have a number of Accounts and all potential passengers can telephone the Respondents through the Bounds name. Bounds Taxis was originally formed in 1958.

13. The Respondents have a number of employed Managers and Despatch Controllers who communicate with the Respondent's Drivers, of which there are over three hundred. The rental for the App iCabbie which provides details of the passenger and location and fare is £175 per week, it is not negotiable. The only time it does not become payable is if a Driver is taking holiday for one week or more. There is some doubt as to whether there is any pro-rata payment for weekend only payment, that was not clear from the evidence.

14. What is clear is if the rental becomes payable by each Driver on a Monday. The latest date to pay is Tuesday. If a Driver fails to pay by Tuesday, a penalty of £10 each day is then added.

15. It would appear that Drivers starting for the Respondents, in reality the Bounds trade name, will be given what is commonly known as 'on boarding'. That is an induction following the handing over of appropriate documents, necessary to become a Private Hire Driver, to the Respondents which are kept at the Respondent's offices. Indeed, Mr Adjei indicated that if you did not attend the 'on boarding' induction session, you would be logged off the iCabbie App as not attending which meant you could not obtain work. This indeed happened to Mr Adjei who was told by a Despatch Controller of the need to attend. Once he had attended this session, Mr Adjei's App was turned back on which enabled him to earn a living and some taxi fares. It would appear, the Controller Despatcher allocates jobs through the iCabbie App and it would appear you could only obtain work and jobs through the App. Each Driver did not have their own business card so the allocation of jobs came through the App via the Despatcher by the trading name of Bounds whom customers contacted.

16. It would appear, all the advertising and marketing for the Respondents was through Bounds Taxis' trading name.

17. Clearly the Driver had to stay logged on to the App in order to pick up work. If a Driver logged off the App he would not receive alerts for nearby jobs. The Drivers could only accept passengers through the App and all jobs were allocated through the App. Drivers would not be allowed to take jobs outside the App.

18. Bounds had the ability to log off Drivers as a penalty for a number of reasons. If a Driver missed a particular job or declined it, he would be logged off the App for a certain amount of time.

19. Another reason for being logged off and thus penalised was where there was a no show which was an option on the App the Drivers could select if they arrived to collect a passenger who did not materialise. In those circumstances a Driver then had to wait five minutes and mark them on the App as a no show. The Driver would then have to wait for one of the Bounds' Despatchers to approve the no show request in order to allow the Driver to continue taking new jobs. It is clear there were occasions when a Controller would take a long time to update the status (page 218) so Drivers would call Control to speed up the process. In the intervening period the Driver could not take another job whilst waiting.

20. It was also the case that Bounds, or the Respondent, had the power to penalise Drivers if they missed a job or decided not to accept a job. They would again be logged off the App for a period of time.

21. There were penalties for not wearing the Company Bounds uniform which had to be purchased from the Respondent. Clearly marketing Drivers as Bounds, these were polo shirts and fleeces, for failing to wear the uniform a Driver could be logged off and therefore unable to work. Examples of notices are at pages 212 and 213 in relation to uniform which clearly states,

> *"…if individuals do not wear uniforms and were caught they would receive a penalty of three hours".*

22. The App works on the basis that a Driver will receive a notification for a new job, he then has an option to either accept or decline the job. It is possible to completely miss a notification for a new job, for example where the signal is bad or a Driver has not checked his phone in the time period the job alert flashed. Again, the Driver would be penalised by the Despatcher Controller for this and logged off the App for a period of time.

23. It is clear that Bounds settle the fares for jobs and the Drivers have no control over fares. This meant a Driver could not negotiate fares direct with passengers and Drivers had to accept discounts that were being offered by Bounds in their marketing material.

24. There was also a rating system on the App where passengers could rate the Driver's service (page 196). These were sent direct to Bounds. The process was entirely in the hands of Bounds.

25. To be clear, the fares are set by Bounds. The Driver has no control of them, when a Driver picks up a passenger he will press 'passenger on board' and the meter will run and the fare will already have been set by Bounds.

26. Bounds also had set fares for family members and members of the Management Team. The Drivers had no control of this and it would be regardless of how long it took to complete a job.

27. Bounds carried out random spot checks on cars to ensure Drivers were wearing the uniform and notices were sent out on Bounds' headed paper warning Drivers that spot checks were possible, making it clear that if a Driver was not wearing their uniform or has an unclean vehicle, he would be logged off the App.

28. It was clear that if a Driver declined a job, there was no option to substitute themselves another Driver, the Despatcher would decide who then had that job. In any event, when being notified of a job, it would be impossible to consider a substitute if a Driver wished to decline the job, there would simply be no time.

29. There clearly was, once you had logged on, an expectation through the Bounds iCabbie that a Driver would be offered a job and be expected to accept it. If he did not he would be penalised by being logged off.

30. The Claimants were also required to place a Bounds logo on their cars whilst they were working and a sticker advertising Bounds on the door of their cars. Again, notices was sent out warning Drivers that without signs on their cars, they would not be allowed to pick up any passengers (page 200).

31. It is noticeable, after the claims were issued that Bounds attempted to provide a written contract (page 519 – 528). Drivers had no option but to accept those terms if they wanted to continue working as a Driver in the name of Bounds.

32. It is clear the nature of the job means there was some waiting time between jobs, or when a Driver was logged off the App. If a Driver wanted to take a lunch hour, they would have to either log off the system or alternatively if they declined a job, then they would be logged off in any event as a punishment.

33. It is clear, each of the Claimants were working throughout the week as Drivers for the Respondent. Mr Adjei did also work as a part time cleaner, but that did not interfere with his normal working schedule with the Respondents.

34. If a Driver became a VIP Driver, it appeared you had to apply, then they would wear different uniforms.

35. What is clear, where Drivers had cash payment Bounds would earn 10p per fare, on credit card bookings Bounds would earn between 5 – 10%, and on Account work again Bounds would receive 10%. This was imposed by the Respondents and Drivers had little or no say.

36. The only evidence of proper meetings between Drivers and Management of Bounds Taxis is at page 814 and 815, on 9 August 2018, at which a number of matters were discussed. Particularly the 20p booking fee, the Respondents confirmed that would stay and that was split between the Drivers and the Respondents 50:50.

37. Again Drivers were told that with Accounts customers, a deduction of 10% would be taken from the Drivers and paid to Bounds Taxis. That money, in any event in the first place, was sent to Bounds and then paid over to Drivers. Drivers were told that waiting time would not be recovered.

38. Drivers were at the above meeting again told to still wear the uniform whilst working and they were informed again that anyone not wearing their uniform would be logged off immediately. Furthermore, if the same Driver was caught on the same day, again not wearing their uniform, there would be an automatic 24 hour log off.

39. The Respondents informed Drivers with credit card bookings which had been declined that it was not possible to get pre-payment.

40. With regard to credibility, a lot has been made by both Counsel in this case about the credibility of witnesses. Particularly Counsel for the Respondent went to some considerable length in his cross examination of both Claimants about their under declaration to the Inland Revenue in relation to their turnover. For which both Claimants have been fined and the matter now addressed with HMRC.

41. In relation to the Respondent's witnesses, their evidence was largely unhelpful, disingenuous and evasive on occasions.

42. The Tribunal has therefore based its decision on what is the reality of the situation between the Drivers and the Respondent, as in part supported by some documentation in the Bundle.

The Law

43. The right to claim by the Claimants in these proceedings are rights under the Working Time Regulations 1998, the right to be classified as a 'worker' as defined by Section 230 of the Employment Rights Act 1996, which describes a worker as,

> "…an individual who has entered into, or works under-
>
> (a) a Contract of Employment; or
> (b) any other contract. Under this contract, you undertake to personally do or perform any work or services for a party to the contract (your employer)."

44. Regulation 2 of the Working Time Regulations 1998,

> "… "worker" means an individual who has entered into or works under (or, where the employment has ceased, worked under) –
>
> (a) a contract of employment; or
> (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, 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;
>
> and any reference to a worker's contract shall be construed accordingly."

45. The statutory definitions are not particularly helpful in guiding Courts and Tribunals on the issue of 'worker', 'employee' and 'self-employed' status.

46. Therefore the Courts and Tribunals have to look to Case Law and in Givraj v Hashwani [2011] UK SC4 [2011] ICR 1004, in which the Supreme Court held that,

> *"the correct test is whether the Contract provides the services to be rendered by an independent Contractor or whether the service provider consents to work under the control of another, and is therefore a 'worker'*.

The Court concluded that an arbitrator was outside this definition, notwithstanding that he provided personal services and received fees due to a lack of control or subordination.

47. In Halawi v WDFG UK Limited, t/a World Duty Free [2015] IRLR50, the Court of Appeal held that a Beauty Consultant who provided her services to a cosmetics company via a limited company and an employment agency and who had exercised her right to substitute performance, was not a 'worker' and so was unable to bring a claim for discrimination. The Court emphasised the requirements of personal service and subordination.

48. In a very recent Uber case before the Supreme Court [2021] UKSC5, on Appeal from the Court of Appeal, the Supreme Court held the Court of Appeal's decision that Uber Taxi Drivers were indeed 'workers'. In that case Uber argued that Drivers were self-employed and they merely provided a technology platform that allowed Drivers to find agreed work with individual passengers.

Closing Submissions

Respondent

49. Mr Skudra, for the Respondent, suggests that the Tribunal ought not to slide towards a contrast and compare with the Uber Judgment. Instead, it ought carefully to interpret the statutory provisions from all the circumstances of the case, the agreement between the parties being only part, as stated at paragraph 84 of the Uber Judgment which cited paragraph 35 of the Autoclenz Judgment. Furthermore, the Tribunal should not adopt a bespoke approach by contrasting and comparing the Uber case when in fact the circumstances of this case are not a check list against other cases.

50. In this case it is submitted that the Respondent provides iCabbie as a tool for a fixed fee of £175 per week to enable the Claimant Drivers to earn for themselves, a living. Which is in fact radios and pens and paper which was formerly used before the onset of technology. The Respondent providing services to the Drivers under a Contract concluded between them and then separately a Contract arises from the provision of services between the Drivers and passengers for each journey.

51. Mr Skudra submits there is simply no mutuality of obligation. Drivers could drive as and when they wished. Drivers would indicate their availability by logging into iCabbie and the Drivers were under no obligation to accept work and nor were the Respondents under an obligation to offer any.

52. Looking at the economic reality test, the Claimants provided their own equipment, cars, insurance and fuel. The Respondent's service costs were fixed for a shared 20p booking fee and the iCabbie fixed cost of £175 per week. In relation to Account, the charge was to the Account holder and the Respondent made a 10% charge to Account holders directly. The Drivers then being paid the fare incurred by Account customers. The fact that the Claimants represented themselves as self-employed highlights the understanding the relationship between Drivers and the Respondent.

53. Mr Skudra accepts there is some element of control, that was for good commercial reasons.

54. Finally in terms of integration, the Claimants were not in any significant way integrated within the system of working in the Respondent. Particularly, the Respondents could continue their business without any input whatsoever from Drivers. In all the circumstances, the claim should therefore be dismissed.

Claimants

55. Miss Malick submits in relation to mutuality of obligations that the Claimants had expressly or impliedly agreed to be subject to a sufficient degree of control for the relationship to be one of master and servant. The

Respondents appointed a Driver Manager who gave instructions on operational matters, including expectation on uniform wearing, car cleanliness, pick up time, waiting time and obtaining tips.

56. The Contractual document post claim does not reflect the reality of the parties' positions and the Drivers were clearly in a subordinate position. There was no evidence the Claimants independently marketed themselves. The Claimants had identifiable patterns of working. Clearly there was mutuality of obligation from the time the Drivers logged on. The expectation to be provided with work.

57. Furthermore, obligations were enforced by the Respondents through the use of penalties. The fact that there was a personal Contract which was a dominant feature and is irrelevant that there was no fixed hours of work. The real question being whether there was any minimum amount of work which the Claimants had obliged themselves to do.

58. In relation to expectation, plainly they had to apply to the Respondents to become Drivers and following that expected to be offered work when they logged on for sufficient hours to make it worthwhile.

59. The economic reality was that they had to work full time in order to make a living and pay the £175 rental per week to make it worthwhile because that equates to £9,000 a year. The fares being based on time and distance calculated by the iCabbie App and Drivers had no input into that.

60. The control existed and can be seen from the expectations from the Respondents, uniform and penalties for not wearing, the cab sign both on the roof and on the side and again penalties for not displaying them, if Drivers refused a job they would be logged off for a period of time and spot checks on vehicles.

61. In relation to integration, Miss Malick submits the Drivers were providing their services as part of the Respondent's undertaking and itself put the Drivers at the Respondent's disposal. The Claimants were not able to market themselves to any other Private Hire company. Again, the obligation to wear Bounds uniforms and drive cars with Bounds signs. The fact that all booking was through Bounds, transactions were made on credit card bookings and Account jobs by Bounds. Bounds would also take 10p per fare fee for cash payments.

62. Miss Malick submits that for all these reasons there can be no other interpretation other than the fact that they are clearly 'workers'.

Conclusions

63. It is true that the Claimants have to establish an irreducible minimum of obligation. Each day the cabbies log on and commence their daily work they log on to a system called iCabbie which is the App provided by the Respondents for a rental fee of £175 per week regardless of the hours

worked by each Claimant. At the end of the shift they log off the App. Therefore as soon as each claimant logs on they are under an obligation to take the jobs provided and if they do not they will be clearly disciplined by being logged off the system. Clearly whilst logged on to the system there is an obligation by the Claimants to work for the Respondents by taking the jobs offered.

64. It is also clear certain documentation such as licences and insurance have to be brought to the Respondents office before they are allowed to work for the Respondents. It is also clear that the Drivers are required to wear the Bounds uniform which consists of polo shirts and fleeces. If they fail to wear the uniform the driver will be logged off and therefore unable to work. This is an example of the Respondents being able to discipline the Claimants, indeed notices were displayed (pages 212-213) in relation to the wearing of the uniform which clearly stated, "If individuals do not wear uniforms and were caught they would receive a penalty of 3 hours". That means they would be logged off for 3 hours and therefore not available for jobs. Clearly a disciplinary sanction imposed by the Respondents.

65. Furthermore, if for any reason a Driver missed a job or decided not to accept a job again they would logged off the system for a period of time.

66. The Drivers' cars had to exhibit the Bounds symbol or advertising logo. The Respondents marketed the business under the Bounds name and each individual Driver was not allowed to market themselves. Furthermore, Bounds clearly set the fees and a Driver does not have the power to negotiate the fees direct with passengers. The Drivers had to accept discounts that were being offered by Bounds in the marketing material.

67. It is also the case that Bounds exercised control over the Drivers in having random spot checks on cars to ensure that Drivers were wearing the uniform and that the cars were exhibiting the Bounds name.

68. It is also the case that if a Driver declined a job there was no option for that Driver to substitute themselves for another Driver in their place. The Respondents would decide who would get that job.

69. The reality of the situation was that the Respondents controlled the Drivers to such a degree there clearly was on overarching contract between the parties.

70. In relation to account jobs the Respondents charged the account holder and the Respondents then make a 10% commission charge thereafter the sum is paid to the Drivers.

71. The fact that the Claimants may have represented themselves as self-employed is irrelevant. It is clear from the factual basis that each Driver had no choice, that was imposed upon them by the Respondents no doubt to avoid any potential employer-employee obligations.

72. It is not the case that the Drivers/Claimants had substantial autonomy and independence, clearly paying a rental of £175 per week required them to provide their service on a regular basis by logging in to make it economically viable.

73. It is therefore clear taking all the factual basis into account that the Claimants were to a significant extent integrated within the system of working for the Respondents.

74. Taking all the realities of the situation into account, the way the Drivers were subjected to control and direction by the Respondents there quite clearly was an irreducible minimum of obligation which points to them being workers without doubt.

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Employment Judge Postle

Date: 13th Sept 2021….

Sent to the parties on: .20th Sept 2021..
THY
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For the Tribunal Office