



EMPLOYMENT TRIBUNALS

Claimant: Mr F Egure

Respondents:

1. Alpha Cars (Liverpool) Limited
2. Alpha Taxis Data Processing Services Limited
3. Mr Jay Bradley
4. Mr Anthony Bradley
5. Mr Liam Sweeney (not yet a respondent)

Heard at: Liverpool

On: 10 September 2021

Before: Employment Judge Robinson
(Sitting alone)

REPRESENTATION:

Claimant: In person

Respondents: Mr C Hayes, Solicitor

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant is neither a worker nor an employee of any of the named respondents above. Consequently, because he has to be a worker or an employee before he can mount the claims, this Tribunal has no jurisdiction to allow these claims to continue and therefore all the claimant's claims are dismissed.
2. The preliminary hearing listed for one day starting at 10:00 am before a single Judge on 22 November 2021 is therefore cancelled.

REASONS

Background

1. The claimant has claims of wrongful dismissal, unpaid wages, race discrimination, disability discrimination and sex discrimination. However, the details of those claims have yet to be established to the Tribunal's satisfaction, but in view

of my judgment there will now be no requirement to establish the specific details of those claims.

2. During the course of this hearing the respondents have maintained the claimant is a self-employed taxi driver during the period he worked for the first respondent.

3. The claimant had to establish today that he was an employee and/or a worker for the purposes of the Extension of Jurisdiction Order 1994, the Employment Rights Act 1996 and the Equality Act 2010.

4. At a hearing on 13 October 2020 Employment Judge Doyle made various orders but arranged for this hearing to take place in order to deal with the status of the claimant as a preliminary issue. One of the reasons for Judge Doyle arranging for this preliminary hearing was to consider the claimant's position once the judgment in the Uber case, referred to below, had been delivered.

Facts

5. The claimant drove a taxi for Alpha Cars from February 2019. He had previously worked for another company as a taxi driver. In December 2019 he was asked to stop driving for the respondent and his engagement was ended. There had been a number of complaints by passengers and also by the first respondent's call handlers about the claimant's attitude. The claimant then obtained a job with another taxi firm called Excel taxis. Coincidentally, Alpha taxis then took over Excel taxis on 20th of February 2020 and consequently the claimant came back into the fold and started driving for Alpha taxis again.

6. The management of Alpha taxis had not been happy with the claimant during his previous employment but according to Mr Anthony Bradley, who gave evidence before me today, they were prepared to give the claimant another chance to drive using the first respondent's technology.

7. The claimant was therefore given his personal digital assistant (PDA) and magnetic stickers with the name of Alpha taxis thereon to place on the door of his taxi identifying it as a taxi connected to Alpha cars.

8. Drivers of taxis in Liverpool can use a number of platforms from various companies in order to obtain fares. Alpha taxis have competition from such large companies as Delta and Uber but also from a plethora of smaller operators.

9. The claimant was registered as a taxi driver with Sefton Borough Council and the Council also issued the licence for his vehicle. It was the Council which gave its taxi drivers the primary routes for them to use and under the provisions of The Local Government (Miscellaneous Provisions) Act 1976 set the maximum price for the licenced operator. Individual drivers could be a licenced operator but, in the claimant's case, Alpha Cars was the licenced operator when Mr Egure accepted bookings from them, but not if he accepted bookings through another taxi agency. None of the respondents knew whether the claimant was working for other

operators. They thought he would have been. The claimant told me that he was only working for Alpha cars during the relevant time. I accept his evidence on that point.

10. The claimant could use his own smartphone as his digital assistant in order to obtain fares, but he chose to use the one provided by Alpha cars. The claimant managed his own hours and chose when to work and the claimant could work any hours he wished, take holidays when he wished and did not have to give notice to the first respondent when or if he would be working but simply log on to its system in order to be given fares. He was not subject to the command of Alpha when he decided to work. He could carry it out in the way he wished. Alpha could not insist that he worked.

11. The claimant paid his own tax and National Insurance but paid a weekly sum to the first respondent in order to gain access to the system.

12. The claimant owned his own vehicle and had to make sure that it was properly taxed and insured in order to satisfy Sefton Borough Council not Alpha. Any damage to the vehicle, including, for example if a passenger vomited in the back seat, would have to be dealt with and cleaned up by the claimant at his expense.

13. The claimant was normally paid cash by the customer. If a credit card payment was made, that card payment would be paid to the first respondent and then paid out without deduction to the claimant each Tuesday. That was done as a service to its drivers and was appreciated by the drivers as it meant fewer practical difficulties when dropping off the fare.

14. The claimant paid to the respondent company a "settle" fee which ranged from £50 to £150 pounds. There was no compunction upon the claimant to pay that amount each week, and he was free to use other taxi operators at any stage, the settle could be negotiated between the claimant and Alpha cars.

15. That fee paid for the allocation of bookings during each week and customers would be allocated to each of the drivers on shift during any day or night on a queuing system. The taxi driver could refuse to take the fare.

16. The software that was used by Alpha was similar to that used by the likes of Uber and gave the offer of a booking on a screen with a pickup and destination. However, different from Uber, the driver could accept or decline as many bookings as he or she wished and did not have to follow a specific route set by Alpha as Uber software demanded. The claimant had full control over which geographical region he worked. The first respondent operates throughout the boroughs of Merseyside whereas the taxi drivers can choose which borough they work in, although they are entitled to go into other boroughs of Merseyside (other than just working in their "home" borough) if they so wish.

17. They are not allowed, under the agreement with Sefton Borough Council, to ply their trade on the streets and have to have a pre-booked customer to pick up. That is why the drivers find it convenient to use the booking systems provided by the likes of Alpha. It is Sefton Borough Council who, under the bylaws, demand the claimant travels the shortest available route when transporting passengers unless

the customer agrees to a different route being taken. In other words, the first respondent did not impose, as Uber did, a route upon the claimant.

18. The claimant could take what is known as a maintenance break at any stage during his working time. But, on the PDA system used by the first respondent it was called a "penalty". Mr Bradley informed me that Alpha taxis could not move that word from the system. The system allowed any driver to temporary log out of the system for any reason. However, if the claimant logged out in this way then he would not be able to log back in for another 10 minutes. The respondents did not see this as a disciplinary process.

19. There was no requirement under the first respondent's system for the customers to rate the driver on a scale of 1 to 5.

20. As set out above, the drivers and the respondent can negotiate a lower fee for the use of the PDA if the driver's hours are too low and he/she is not earning enough money to pay the full amount of settle. Alpha cars charge 25% of a driver's previous week's takings for access to the system with a capped figure of £150. Other than that, none of the respondents exercise any control over the claimant's earnings.

21. The respondents demand that the claimant has a legally compliant vehicle registered with their governing council, in the claimant's case Sefton Borough Council. The first respondent does not require to see insurance or MOT certificates. The first respondent does not dictate to the drivers what colour, size or make of the vehicle. There is no requirement for the driver to wear a uniform.

22. The respondents do not require any notice on a vehicle identifying the vehicle as an Alpha taxi, but the Local Authorities require such notice to be placed on the side of the car with magnetic signage, so that the passenger, in theory at least, knows they are getting into a regulated taxi.

23. Any driver working for Alpha taxis could work for other companies and change the signage on the side of their vehicle at any time. The claimant explained that that became a nuisance as the signs often fell off the vehicles but agreed it was open to him to use other companies' platforms to find customers.

24. The claimant was shown how the PDA system worked when he commenced working for Alpha taxis and was given the first respondent's policies with regard to expected behaviour and was given an Alpha taxi handbook.

25. There is a system whereby customers can rate the taxi driver and if poor feedback continues from a number of customers then Alpha taxis will tell the driver that they no longer want that driver to use their platform. There was no part of the system which allowed the drivers to rate a passenger as in the Uber case.

26. At the end of each week, relevant financial information is sent to the taxi driver by the first respondent. This does not include any information with regard to cash that has been paid by the customer to the taxi driver but does include any card payments that have been paid to Alpha taxis for the driver.

27. The claimant was ultimately stopped from using the Alpha cars' app in April 2020 for reasons similar to those given when Alpha stopped him from using its app in December 2019.

The Law

28. The law with regard to worker and employee status has become clearer since the Supreme Court judgment in the appeal of **Uber BV and others v Aslam and others** where the judgment was issued on 19 February 2021.

29. The principles that I have taken from that judgment and from that of **Autoclenz Limited v Belcher 2011ICR 1157** are these:

- (1) The test with regard to worker and employee status must focus on the reality of the situation. This does not preclude a consideration of the terms of any written agreement, but such consideration is only part of the test. The relative bargaining power of the parties must be looked into and considered and ultimately the true agreement must be gleaned from all the circumstances of the case, after all the facts have been decided.
- (2) The Employment Tribunal must keep in mind the purpose of the legislation which is to protect and acknowledge the vulnerability of workers. The touchstone for that vulnerability, subordination and dependence is the degree of control exercised by the putative employer over the worker on services performed by the individual concerned.
- (3) The greater the extent of such control the stronger the case for finding the individual a worker.

The Uber case

- (4) It is instructive to consider the business model in the Uber case. Uber supplied route planning software with detailed directions for drivers. When the driver pressed "complete trip" the Uber app calculated the fare automatically. Uber drivers were prohibited from exchanging details with their passenger and a rating system of one to five was in place for both drivers and passengers to rate each other.
- (5) When joining Uber the drivers had to produce their National Insurance certificate, driving licence, licence to drive a private hire vehicle, that vehicles logbook and MOT certificate, if applicable, and an insurance certificate.
- (6) Uber drivers had also to watch a video presentation about the Uber app and its procedures.
- (7) There was a list of accepted makes and models of vehicle that the drivers could use. Those vehicles had to be in good condition and no older than a specified age and, preferably, the colour had to be either silver or black.

- (8) Uber drivers could use other providers in order to find passengers waiting to be driven to their destination and they did not have to wear any insignia or uniform and there was no Uber branding on the vehicles required.
- (9) It was accepted by the Supreme Court that Uber drivers had a substantial measure of autonomy and independence in that they were free to choose when, where and how much they worked.
- (10) The arrangement for the Uber driver only existed when that driver decided to work and not when they were not working. The lack of worker status in the gaps when not working, it was decided, should have no bearing on the status when working.
- (11) Although it was accepted by the Supreme Court that there were three parties involved in the Uber arrangement (Uber London, the driver and the passenger), the Employment Tribunal when considering these issues must focus on the relationship between, in this particular case, Alpha cars and Mr Egure.
- (12) The questions that were asked and answered by the Supreme Court, amongst others, were, who determines the price charged to the passenger, who defines the service provided to the passenger, and can the driver market their own services and develop their own business? All those questions were answered in favour of the drivers in the Uber case. Uber set the price, Uber defined virtually every aspect of the service the driver provided to his/her passenger and , by prohibiting contact between driver and passenger, there was no realistic opportunity for Uber drivers to develop their own business. Consequently, they were found to be workers.
- (13) Five important findings were made by the Supreme Court which are set out at paragraph 94 of the Judgment. Firstly, the amount charged was fixed by Uber, Uber fixed its own service fee and had a discretion to refund, either wholly or partly, a fare after a complaint. Secondly, the terms on which the drivers performed the services were dictated by Uber. Thirdly, Uber controlled the information provided to the driver for example the driver was not informed of the destination until he picked up the passenger and the driver's rate of acceptance of all fares was monitored. Fourthly, Uber vetted the cars and were prescriptive with regard to their demands relating to the cars. Finally, Uber restricted communication between the driver and the passenger.

Decision

30. I set out below the reasons for my judgment and for ease of presentation I have included findings of fact in this part of the judgment.

31. Because the claimant was making a whole raft of claims from wrongful dismissal through to race disability and sex discrimination, it was for the claimant to establish that he was either an employee and or a worker for the purposes of the Extension of Jurisdiction Order 1994, the Employment Rights Act 1996 and the Equality Act 2010.

32. For the purposes of this judgment I need not set out each parties submissions to me, but, simply put, the claimant said he was a worker and each respondent said that Mr Egure was a self-employed contractor.

33. I find that the claimant was a self-employed private hire driver for the following reasons:

- (1) He was registered as a driver with Sefton Borough Council and each of those private hire drivers could choose which app from which operator they wished to pay for and could, if necessary, use a number of different apps in order to find passengers.
- (2) It was Sefton Borough Council who fixed the maximum fare and not Alpha.
- (3) I accept the claimant was provided with a PDA by the first respondent, but he had the option to use his own mobile phone.
- (4) The claimant could terminate his relationship with the first respondent at any time without notice. He could work when he wished to, and he managed his own finances and submitted his own tax return and paid his own National Insurance contributions. Alpha could not make the claimant work at any given time.
- (5) Although the claimant paid a weekly fee called a "settle" this was, in effect, money to hire the PDA and to receive details of passengers. Mr Egure was paid directly by those passengers once he had decided to take up the ride. The claimant had no obligation to accept and, unlike Uber, the booking offer which was shown on the screen in his vehicle showed both the pickup and the destination. Consequently, the claimant could decide to decline the booking because, for example, the pickup was too far away and/or the destination was somewhere where he did not want to travel.
- (6) The claimant had full control over which geographical region he could operate in and one of the features of the PDA was that a driver for Alpha was able to sift through bookings and only take bookings in a direction which the driver wished to go.
- (7) Alpha did not take a cut of the fare as Uber did (Uber took 25% of all their drivers' fares). The Uber driver only received his fair once Uber had taken that cut whereas the claimant received his money directly through cash payments or, if the passenger paid by card, ultimately received the money in full from Alpha.

- (8) The settle payment was paid at the beginning of the week for the week following consequently no money was taken directly out of the fares. The driver could also insist that all payments to him would be cash payments and not taken on a card, thus eliminating the need for Alpha to be involved in the payment process.
- (9) Although magnetic signage was given to the claimant to place on his car, he himself accepted that on occasions it fell off. The claimant could, if he wished, have had different companies' signage on his vehicle, however because of its propensity to fall off he thought that would be inconvenient. There was no requirement by Alpha for such signage to be carried. It was the Borough Council that insisted, through its bylaws, that vehicles had signage placed on vehicles.
- (10) The claimant had freedom to choose his own vehicle, the colour of it and change vehicle whenever he wished. No vehicle documentation had to be shown to Alpha.
- (11) There was no requirement for the drivers to wear uniforms. I accept that was the case with regard to the Uber drivers.
- (12) The drivers could exclude particular customers or addresses if they did not want to service those passengers without censure from Alpha.
- (13) There were certain features of the agreement between the claimant and Alpha which pointed to a worker relationship which included an induction process so that the drivers could understand Alpha's PDA system and that there was a particular standard of behaviour which was expected of the claimant in performing his tasks for Alpha, which were set out in a driver handbook. I also accepted that there was some element of control because, if the driver did not accept a certain number of bookings, he could be taken off the system for initially 10 minutes and ultimately, if the driver continually declined fares, the claimant could be asked not to work for the respondent. However, drivers could revoke a booking if there was an appropriate operational reason. The system was designed not so much to control the drivers but to allow all drivers to have a fair share of the customers waiting to be picked up. Otherwise the drivers could "work the system" by picking and choosing which fares they wanted to take up, which then tended to warp the options for other drivers.
- (14) By using the PDA system of Alpha the claimant could expand his own business, cultivate relationships with regular users and build up his own customer base over a period of time as there was no prohibition by Alpha with regard to communication between the claimant and the passenger. The claimant was a genuinely independent person who had real control over how he worked on each shift once he got into his vehicle.

- (15) The understanding of the drivers using the respondents' PDA system was that they were self-employed contractors free to work elsewhere and were not integrated into the respondent's operation. The respondent did employ over 65 employees as office staff. None of the drivers were involved in the performance of those administrative and office functions but were free to ply their trade once they had the information from the PDA system.
- (16) I have also considered what control Alpha had over the claimant. Was he integrated into the organisation and what was the economic reality of the relationship?. I placed no more emphasis on one of those tests over the other.
- (17) On balance, accumulating all the information and facts as set out above, there was more evidence suggesting the claimant was self-employed than there were facts showing that he was a worker or employee. I accepted that there was an obligation for the claimant to personally do work but ultimately Mr Egure fell on the self-employed side of the dividing line. He entered into a contract with the customer to provide his service as a taxi driver and not as part of Alpha's organisation. He was an accessory to the Alpha's business and not integrated into it. That is how the drivers liked it.
- (18) In short, the claimant was not in need of statutory protection, and Alpha did not have the level of control over him so as to suggest he was an employee or worker. The claimant was able to use other taxi companies' systems and he had not agreed to give his services exclusively to the respondent. Mr Mensah suggested that the claimant was disposable and could be replaced by another taxi driver at any time. I did not agree fully with that assessment. I did accept that if the claimant did not work any given shift there were plenty of drivers out there (1200 on Alpha's books) who would take up any slack. What I did accept was that the claimant could let down Alpha taxis at any point by simply not working for them and either not working at all or by using another companies' PDA system. Consequently, I find that the claimant was running his own business and using the first respondent's technology to find his fares. No more than that.

Employment Judge Robinson
Date: 4 October 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
14 October 2021

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.