



# EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondents

Mr S Sardar

(1) Uber London Ltd  
(2) Uber Technologies Inc

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central

ON: 25 May 2022

BEFORE: Employment Judge A M Snelson

On hearing Mr T Albert, trade union representative, on behalf of the Claimant and Ms K Davis, counsel, on behalf of the Respondents, the Tribunal determines that:

- (1) The Tribunal has no jurisdiction to consider the Claimant's complaint of breach of contract;
- (2) The proceedings are accordingly dismissed.

### REASONS

#### *Introduction*

1. By a claim form presented on 29 March 2022 the Claimant brought a claim for 'notice pay' and expressed the wish to be 'reactivated by Uber'. The Respondents resisted the claim, primarily on the ground that the Tribunal had no jurisdiction to entertain it.
2. The matter was listed before me for final hearing by CVP. All parties were content to proceed in that way. There were no connection problems.
3. Despite both sides being represented, none of the conventional preparations for trial had been carried out. This may have been at least partly because the Respondents' solicitors were instructed quite late. It was plain to me that if the dispute was to be determined on evidence, the hearing would have to be adjourned and case management directions given. Ms Davis did not disagree but submitted that the Respondents' jurisdictional defence could properly be determined on legal argument

alone, based on the rival pleadings. Mr Albert, on behalf of the Claimant, agreed. Accordingly, I heard submissions from both representatives, after which I gave a short oral judgment dismissing the claim for want of jurisdiction.

4. These reasons are given in written form at the request of Ms Davis.

### *Background*

5. In his pleaded case the Claimant states that he worked for 'Uber' as a driver from 31 May 2016 until 15 November 2021, when his engagement was summarily terminated. In the 'Statement of Case' accompanying the claim form he supplies detailed grounds in support of his contention that he was employed as a 'worker' and that, under the common law, he was entitled to 'reasonable notice'. Accordingly, he claims damages of £5,000, representing five weeks' pay.
6. The Respondents presented a response to the claim on 6 May by which, inter alia, they contended that the claim fell outside the Tribunal's jurisdiction because (regardless of his true legal status) it was clear that the Claimant was not an employee of 'Uber' and so had no standing to bring a claim under the contractual jurisdiction.

### *Legislation*

7. The Tribunal's jurisdiction is entirely statutory. By the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 ('the 1994 Order') it acquired for the first time a limited jurisdiction to determine contractual claims. Article 3 includes, so far as material:

**Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum ... if –**

- (a) **the claim is one to which section 131(2) of the [Employment Protection (Consolidation) Act 1978]<sup>1</sup> applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine ...**

8. The Employment Tribunals Act 1996 ('ETA 1996'), s3, empowering Ministers to extend the jurisdiction of the Employment Tribunal, has replaced the equivalent power under the 1978 Act. No Order has been made under it but the 1994 Order is to be treated as if made under it.<sup>2</sup> The section includes, so far as material:

**(2) Subject to ... this section applies to –**

- (a) **a claim for damages for breach of a contract of employment or other contract connected with employment ...**

9. ETA 1996, s42(1) includes, so far as material:

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<sup>1</sup> Referred to below as 'the 1978 Act'.

<sup>2</sup> See s44 and sch 2 Pt I, paras 1-4.

**“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing**

...

**“employment” means employment under a contract of employment and “employed” shall be construed accordingly ...**

10. In keeping with the scheme of ETA 1996, the Employment Rights Act 1996 (‘ERA 1996’), s230(1) defines an “employee” as a person working under a contract of employment and s230(2) reproduces the definition of a contract of employment contained in ETA 1996, s42(1).

*Analysis and conclusions*

11. Mr Albert did not argue that the Claimant was employed under a contract of employment. He stood by the pleaded case that he was a ‘worker’ as defined in ERA 1996, s230(3)(b).
12. There can be no question of inherent jurisdiction. Unlike the High Court, the Tribunal has jurisdiction only if and to the extent that Parliament has given it jurisdiction.
13. The 1994 Order is clear and unambiguous. It extends jurisdiction *only* to the extent of permitting ‘employees’ – persons engaged under contracts of service – to bring contractual claims. That disposes of the jurisdictional issue: the claim is brought under the 1994 Order.
14. Mr Albert’s wider submission based on the primary legislation was in any event unfounded. The restriction of the 1994 Order to employees is consistent with the enabling powers under ETA 1996, s3(2). The argument, resting on the words “or other contract connected with employment”, that the latter provision empowers the Minister to extend the jurisdiction to ‘workers’ fails because it ignores the first requirement for ‘employment’, which s42(1) defines as employment under a contract of service. A claim *may* be brought under a contract which is not a contract of service but only if that contract is itself ancillary or collateral to a contract of service.
15. Mr Albert referred to the recent *Uber* litigation which culminated in the judgment of the Supreme Court in 2021, but that authority was not concerned with the Tribunal’s contractual jurisdiction and provides no help here.
16. Finally, I should stress that my judgment is about the Tribunal’s jurisdiction. It says nothing about any possible claim open to the Claimant in the courts.

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EMPLOYMENT JUDGE- Snelson  
27/05/2022

**Judgment entered in the Register and copies sent to the parties on : 27/05/2022**

**For Office of the Tribunals**