



**THE EMPLOYMENT COURT OF NEW ZEALAND
TE KŌTI TAKE MAHI O AOTEAROA**

25 October 2022

MEDIA RELEASE

E TŪ INC & ANOR v RASIER OPERATIONS BV & ORS

(EMPC 230/2021) [2022] NZEmpC 192

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at <https://www.employmentcourt.govt.nz/>.

The hearing

The issue for the Employment Court was whether four Uber drivers were employees while providing transportation services under the Uber App.

Background

The five defendants are individual companies that make up the Uber ride sharing and meal delivery service digital platform. In the ride sharing service, the platform connects riders with drivers. In the meal delivery service, the platform connects restaurants, eaters, and delivery drivers.

The four drivers had written agreements with the various entities at different points in time between August 2016 and May 2022. The written agreements all specified that the entities were not employers but rather providers of the App that connects drivers to the digital platform and facilitators of the interactions on the platform. The defendants' position was that these written agreements accurately described the relationships.

The four drivers sought a declaration that the real nature of the relationship was that the Uber entities collectively employed them.

Decision released today

The Chief Judge of the Employment Court (Chief Judge Christina Inglis) found that all four drivers were employees of Uber during the periods where they performed transportation services.

The Employment Court highlighted the need to adopt a purposive approach to determining the status of the drivers, having regard to the applicable legislation and its role in protecting vulnerable workers, regulating the labour market, and ensuring the maintenance of minimum standards. It was held that the broader social purpose of the legislative framework must be kept in mind when considering whether a worker is an employee. Thus, the task for the Court is to ascertain whether the individual is within the range of workers to which Parliament intended to extend minimum worker protections.

The Employment Court also reiterated that the question of whether someone is an employee depends on the substance of the relationship and how it operated in practice rather than the label attached to the relationship in the written agreement.

The Court accepted that some of the usual indicators of a traditional employment relationship were missing. However, it was found that significant control was exerted on drivers in other ways, including via incentive schemes that reward consistency and quality and withdrawal of rewards for breaches of Uber's Guidelines or for slips in quality levels, measured by user ratings.

Uber collectively had sole discretion to control prices, service requirements, guidelines, terms and conditions as well as other aspects of the business such as marketing. Drivers were restricted from forming their own relationships with riders or from organising substitute drivers to perform services on their behalf.

The Court found that in reality Uber exercised significant control over each of the drivers. While the means via which the control was exercised are not generally associated with a traditional workplace, the underlying point remains the same: "Uber was able to exercise significant control because of the subordinate position each of the plaintiff drivers was in and which its operating model was designed to facilitate and did facilitate."

The Court considered that the evidence pointed to Uber running a transportation business, not merely a digital platform that facilitates interactions between drivers and passengers. It held that the drivers worked for that business; it was not simply a commercial arrangement; and they did not run a business of their own.

Uber was entitled to form a complex structure with five interrelated corporate entities. The ride sharing and meal delivery services were each operated by two separate entities. The Court found that an employee may have more than one employer and that an employer may be more than one corporate entity: declarations were made to that effect.

This judgment does not have immediate legal effect on any Uber driver other than the four specified drivers who sought declarations from the Court. However, because of the apparent uniformity of the defendants' operation, the judgment may have a broader potential impact on other Uber drivers.

Disposition

Chief Judge Christina Inglis made declarations that the four drivers were employed by specified Uber entities during specified periods.

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