



EMPLOYEES OR INDEPENDENT CONTRACTORS

Implication of The Uber BV case

- It is usual today amongst businesses for people to be hired as independent contractors/contract staff as opposed to employees, which may mean the usual benefits to which employees are entitled under the laws of most countries such as pension rights, minimum wage will not be applicable to the independent contractors/ contract staff.
- The United Kingdom Supreme Court (UKSC) in Uber BV and others (Appellants) v Aslam and others (Respondents) delivered its Ruling dated 19 February 2021 clarifying that the fact that the employment agreement states that the person employed is an independent contractor and not an employee does not necessarily mean the working relationship will be interpreted as stated in the agreement.
- The UKSC stated that the facts of the relationship will be scrutinized as against relevant statutory law to determine if indeed the employed person is an employee or an independent contractor.

The Uber BV Case

- In the Uber BV case, the Respondents (Aslam and Others) had sued at the Employment Appeal Tribunal claiming that they were employees and not independent contractors and were entitled to benefits guaranteed employees under the National Minimum Wage Act 1996 and the Employment Act 1998. Uber BV argued that the Respondents were independent contractors and not employees. The Employment Appeal Tribunal and the Court of Appeal both agreed with the Respondents. The UKSC in agreeing with the Respondents as well, held, amongst others, that:
 - ❖ Under the Employment Act 1978, a worker includes people who are self-employed but provide their services to other businesses and should be entitled to rights statutorily guaranteed to all workers;
 - ❖ Uber BV controlled the manner its drivers worked, since drivers had to submit to Uber BV's requirements by signing up to the relevant agreements;

- ❖ Uber BV controlled how drivers charged customers since the drivers cannot charge higher than the Uber BV trip fare and if they charge lower, the driver bears the discount as Uber BV would still charge its usual fee on the fare;
 - ❖ drivers also must follow the route Uber BV recommends;
 - ❖ drivers cannot liaise directly with customers but must use the Uber app;
 - ❖ the fact that the drivers were not exclusively Uber drivers and were free to work with any other driving company when not logged onto the Uber app was insufficient fact on which to hold that Uber BV did not control the drivers.
- The UKSC in clarifying why the court cannot simply give effect to what the parties agree via the employment agreement, held that the drivers do not have bargaining power in negotiating the contracts with Uber as those contracts were standard.

Implication of the Uber BV case Globally

○ Where the country governing your employment/service agreements has statutes similar to the Employment Act 1998 and/or UK court cases are of persuasive authority in their local courts, it is important to understand the possible impact of the Uber BV case on your independent contractor/service agreements. Where your business, amongst others:

- ❖ Determines how the person employed works,
- ❖ Controls work hours,
- ❖ Controls place of work,
- ❖ Has disciplinary measures in place that affects the person employed,
- ❖ Has better bargaining power in negotiating the employment agreement,

it is possible that your business' relationship with the person employed may be recharacterized as one of employer-employee regardless of the name the parties may have given it in the employment agreement.

Any such recharacterization by the court may expose your business to additional sums payable to the person employed and additional expenses for your business than planned.

For more information kindly contact, us on E: lawyers2021@tonbofa.com;

T: +234(0)1-2954080

