BANDI & OTHERS V BOLT OPERATIONS OÜ AND ANOTHER

EMPLOYMENT TRIBUNAL JUDGMENT SUMMARY

8 November 2024

Important note: this summary is provided to assist the press and the public to understand what the Employment Tribunal ('ET') has decided. It forms no part of the Employment Tribunal's decision.

1. The Claimants are some 10,000 private hire drivers who carry passengers for reward in the name of Bolt in various towns and cities within the UK.[1] Driving work is allocated to them through the Bolt App.

2. By their claims the Claimants claim that they are 'employed' by a relevant Bolt company as 'workers' whenever they undertake a driving assignment and for so long as they make themselves available to do so, and thus entitled to be paid not less than the national minimum wage and to receive paid annual leave and certain other benefits. The Respondents resist the claims, maintaining that the Claimants do not quality as 'workers' and contract with them in the capacity of self-employed independent contractors.

3. The matter came before the ET in the form of a preliminary hearing to determine three issues bearing upon the legal status of eight sample Claimants ('the Sample Claimants). In the event, it has not been necessary for the ET to address one issue. The two which it has decided are:

    (1) Are the drivers 'workers' within the meaning of the National Minimum Wage Act 1998 ('NMWA 1998'), section 54(3)(b) and the Working Time Regulations 1998 ('WTR 1998'), reg 2?

[1] Some are former Bolt drivers but for brevity this summary refers only to current drivers. Also for brevity, since the great majority of Bolt drivers are men, male pronouns only will be used.

(2) If the drivers are workers, during what periods are they working for the purposes of NMWA 1998 and/or WTR 1998?

Issue (1)

4. To address Issue (1), the ET had to consider two separate periods: June 2019 to July 2022 and August 2022 to date. This was because, at the end of July 2022, Bolt's business model changed. During the first period, it operated the 'Agency Model'. During the second, it operated the 'Principal Model'.

5. Under the Agency Model, Bolt's primary case was that it did not run a transportation business but acted as agent for drivers, who entered into separate contracts with their passengers. Alternatively, Bolt argued that, if it did have a contractual relationship with the drivers under which they provided driving services, it had the status under that relationship of a customer of the drivers, and accordingly did not 'employ' them within the meaning of the statutory definition of an employer/worker contract.

6. Applying the leading cases including *Autoclenz Ltd v Belcher* and *Uber BV v Aslam* the ET rejected Bolt's primary case under the Agency Model, holding that it did not correspond with the true relationships between the parties and that the reality was that on each assignment the drivers were employed by Bolt as 'workers' in its transportation business. It also rejected (on similar grounds) Bolt's alternative case, holding that it was inconsistent with the practical reality.

7. Under the Principal Model, Bolt admitted that it ran a transportation business but denied that it engaged drivers personally. It argued that, in light of its 'Bolt Link' scheme, which enabled any registered driver to have other drivers operating under his Bolt account, the element of personal service essential to 'worker' status was negated. Alternatively, Bolt repeated its secondary argument under the Agency Model.

8. The ET rejected Bolt's primary case under the Principal Model, holding that 'Bolt Link' did not entitle any driver to perform his obligations through a substitute, did not negate any driver's

obligation of personal service, and did not have any bearing on the proper legal analysis of the 'worker' status issue. The ET also rejected Bolt's alternative argument, for the same reasons as those given for rejecting its alternative case under the Agency Model.

Issue (2)

9. The ET considered that, having regard to the case-law (in particular *Uber BV v Aslam*), it was necessary first to establish, in relation to each Sample Claimant, whether the necessary 'irreducible minimum of obligation' (an essential prerequisite of any contract) exists in circumstances where (a) he is in the territory in which he is licensed to operate and (b) he has the Bolt App switched on.

10. The ET concluded that in the cases of six Sample Claimants, that requirement was met and that accordingly a 'worker' contract came into existence when conditions (a) and (b) were both satisfied. The crux of its reasoning was that Bolt had failed to establish that it had communicated to these drivers its decision to discontinue its practice (applied routinely from 2019 to 2021) of requiring drivers to accept a specified proportion of the trips offered to them, on pain of being forcibly 'blocked' from using the App for a specified time if they failed to do so.

11. In the cases of the other two Sample Claimants, there was no mutuality of obligation because the ET found that they had been made aware that Bolt was not (or no longer) operating a minimum acceptance rate policy. Once these drivers were aware of this fact, no 'worker' contract between Bolt and them could come into existence until the moment when they accepted any offer of a trip and thus became subject to the obligations which that acceptance entailed.

12. The next question was: when is a Bolt driver 'working' under a 'worker' contract? Since the Sample Claimants did not seek a finding that they are 'working' under a Bolt 'worker' contract when 'multi-apping' (using more than one Private Hire Operator app at the same time), the ET's findings are confined to drivers who are not 'multi-apping'. It has not engaged with the difficult problems of analysis which the case of the 'multi-apping' driver might pose.

13. Subject to the qualification referred to in para 12 above, the ET adopted the general analysis in *Uber BV v Aslam*, namely that, where and for so long as a 'worker' contract exists (*ie* the requisite mutuality of obligation is established), the driver is 'working' under a 'worker' contract when he (a) is in the territory for which he is licensed, (b) has the App switched on and (c) is ready and able to accept trips.

14. For the purposes of WTR 1998, the ET found that the time of a driver who is not 'multi-apping' and meets the three conditions referred to in para 13 above is 'working time' under WTR 1998, reg 2(1), being periods 'during which he is working, at his employer's disposal and carrying out his activity or duties.'

15. Under NMWA 1998, which is not drafted by reference to the concept of working time, work is divided into four categories for the purposes of classification. The ET resolved a disagreement between the parties, holding that the Bolt driver, when working under a 'worker' contract, is engaged in 'Unmeasured Work.'