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NZ Uber drivers contractors not employees

The case of *Arachchige v Rasier New Zealand Ltd & Uber B.V.* confirms Uber is not required to give über (or even minimum, for that matter) employment entitlements to its drivers.

In December 2020 the Employment Court issued a judgment which considered whether or not an Uber driver in Auckland was an employee.

Uber driver Mr Arachchige sought a declaration that he was an employee of Uber and not an independent contractor as the ride sharing company claimed. The driver wanted to bring a personal grievance for unjustifiable dismissal and, if found to be an employee, would have been entitled to statutory rights such as holiday pay.

Uber driver an independent contractor not an employee

The Employment Court held that the driver was not employed by Uber. Primarily this was because Mr Arachchige was operating his own business in the manner and at the times he wished. The Court found the driver was not directed or controlled by Uber beyond limited matters connected to operating under Uber's 'brand'.

Under Uber's Services Agreement with drivers:

- drivers are not required to work exclusively for Uber;
- drivers are not required to display any Uber logo or signage; and
- drivers are allowed to undertake other activities, even if those activities compete with Uber.

The Court distinguished the recent Employment Court judgment of *Leota v Parcel Express* (which we discussed in an earlier article Contractor vs. Employee) including because Mr Arachchige was not particularly vulnerable or lacking comprehension.

Does this mean every ride-sharing app driver is a contractor?

The Employment Court avoids making law that should be left to Parliament, such as broad-brush reclassification of certain workers either way as employees or contractors.

Employment Court judgments regarding classification of employees regularly remind us that each situation is individual and the inquiry itself is 'intensely fact-specific'. The *Arachchige* judgment therefore only applies to Mr Arachchige himself, based on his individual circumstances.

In this author's opinion Uber drivers are an example of a classification that does not require further careful analysis of individual circumstances. We know Uber's contract terms under the Services Agreement will be the same for each driver, and one could be fairly certain Uber will treat each driver in fundamentally the same way. It would seem incongruous for a Court to find Uber Driver A is a contractor, but Uber Driver B is an employee purely because Driver B was personally more vulnerable or lacking comprehension (say because Driver B has a lower IQ).

The status in other countries

The *Arachchige* judgment also discussed the classification of Uber drivers in other countries following what was recent litigation in Australia and the United Kingdom. Ultimately the Judge put little weight on the outcomes in those jurisdictions including because there is no equivalent to section 6 of the Employment

NZ Uber drivers contractors not employees
(Continued)

Relations Act in other countries (which sets out the definition of 'employee' in New Zealand).

Subsequent to the *Arachchige* case the United Kingdom Supreme Court dismissed an appeal by Uber, ultimately confirming a UK Employment Tribunal ruling that Uber drivers should be classified as workers (not independent contractors).

Uber UK has since announced it will 'reclassify' all of its UK-based drivers as *workers*. The *worker* classification is a halfway category in UK law which entitles workers to some (but not all) employment entitlements such as minimum wage and holiday time. There is no *worker* equivalent in New Zealand, although future legislation introducing something similar is possible.

Want to know more?

If you have any questions about the above article please contact our specialist Employment Team.