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Gig Economy

Uber ruling in London echoes around the world

The decision of a UK tribunal to take a middle way is fair on workers and the company

FT View



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OCTOBER 30, 2016

In its harsh judgment on Uber last week, a London employment tribunal likened the argument of one of the car-hailing company's executives to a line from Hamlet. "The lady doth protest too much, methinks," it said of her claim that it was not a transport company but a technology platform.

It could also have quoted another line from Shakespeare: Hamlet's reference to a military engineer being "hoist with his own petard", or explosive device. Uber's device has been to turn itself into a global transport company valued at \$63bn in June yet to deny that it employs drivers. That device blew up in its face on Friday.

The tribunal's decision that Uber's 30,000 drivers in London are workers with rights to legal minimum wages and holiday pay is the latest in a series of conflicting decisions around the world. Courts and regulators have tussled with the question of whether Uber drivers are employees or self-employed contractors, an issue with profound implications for the "gig economy".

The London ruling, against which Uber is appealing, is significant both because of the judgment's clarity and the fact that UK employment law offers a middle way. "Workers", the category to which the tribunal allocated Uber drivers, enjoy some of the rights of employees but not all.

Like other large "gig economy" companies such as Airbnb, Uber offers a brand and marketing; technology to link buyers and sellers; and payment services. These platforms make it simple to hire a car, or stay in a room, without taking the full responsibility of employment or capital investment.

The tribunal briskly dismissed Uber's efforts to evade employment responsibility, concluding: "The notion that Uber in London is a mosaic of 30,000 small businesses linked by a common platform is to our minds faintly ridiculous." It condemned the US company's use of "fictions" and "twisted language" (<https://www.theguardian.com/technology/2016/oct/28/uber-tribunal-judges-fictions-twisted-language-appeal>) in contracts.

The tribunal noted that it concurred with one California court's view of Uber and its employment responsibilities, but other US tribunals have backed the technology company. "Uber is no more an employer to drivers than is an art gallery is to artists," said one Florida ruling.

It is true that Uber does not qualify as an employer in many legal jurisdictions that offer a binary choice of employment and self-employment. But Uber's ability to arbitrage the law by insisting to regulators that its drivers are independent contractors despite its tight control of how they work indicates that laws should be updated to match innovation.

Employment law has developed to avoid the exploitation of workers and ensure that employers contribute to benefits such as unemployment insurance and medical care. If technology allows companies to avoid these responsibilities by placing workers at a distance while retaining managerial fiat, it will not only limit workers' rights but damage social welfare.

Placing the full weight of employment contracts on Uber and other such companies would also be wrong. Many Uber drivers like the freedom it offers, and consumers have gained from the ability to hail a quality ride easily. Courts should not regulate Uber out of business and sacrifice such benefits.

The tribunal's approach is to judge Uber drivers "workers" with rights to the UK minimum wage and holiday pay. In the US, others suggest creating a category of "independent workers" with limited benefits, including employer contributions to pensions and healthcare. The law needs to keep Uber in business but keep it honest.

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