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Uber loses landmark tribunal decision over drivers' working rights



Uber and its drivers have been embroiled in a legal battle CREDIT: AFP

By **Cara McGoogan** and **Jon Yeomans**

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Uber will have to grant its drivers basic employment rights such as the National Minimum Wage and holiday pay after it lost a London tribunal over the treatment of its drivers.

The "landmark ruling" could destabilise the app's business model.

The case was brought by the GMB trade union, which has more than 700,000 members, following claims that Uber had disregarded its drivers' basic employment rights.

The legal action, which started over a year ago, alleged that Uber failed to ensure its drivers were paid the minimum wage or that they receive the minimum amount of paid holiday.

The company has always maintained that its drivers are self-employed contractors rather than permanent employees, which means they are entitled to different benefits.

About | Uber

- ◆ Uber allows smartphone owners to hail a driver using the location software in the passenger and the driver's phones. A driver in the vicinity is summoned, often making it quicker and easier than booking a minicab or hailing a taxi
- ◆ The app is connected to the passenger's credit card, with journeys being charged for on a per-mile and minute basis. Uber essentially takes a referral fee, with the majority going to the driver
- ◆ Uber drivers use their own vehicles and pay for their own fuel.
- ◆ The app has proved controversial as it has shaken up the more-regulated taxi industry, and has been accused of not respecting drivers' rights. In October 2016, a UK tribunal found that Uber drivers are entitled to holiday pay, rest breaks and National Living Wage
- ◆ It has been phenomenally successful: It has had billions in funding, is active in around 500 cities and has millions of users
- ◆ In June, Uber launched a food deliver service, UberEats, in London

Uber, which works with more than 40,000 drivers in the UK, insists that it is a technology company that facilitates independent drivers connecting with passengers, as opposed to being a traditional taxi company.

Solicitor Alex Bearman, partner at Russell-Cooke, said the ruling was bad news for the company and others operating in the so-called "gig economy."

"The company now faces having to fund costly benefits for its drivers such as holiday pay, sick pay and pension contributions. It is possible that it will look to do so by increasing the percentage of each fare that it keeps as commission," said Mr Bearman.

The ruling has been seen as a test of the UK's "gig economy", which has come under fire for allegedly exploiting workers.

Nigel Mackay from the law firm Leigh Day, which represented the drivers, said: "We are delighted that the Employment Tribunal has found in favour of our clients.

"This judgment acknowledges the central contribution that Uber's drivers have made to Uber's success by confirming that its drivers are not self-employed but that they work for Uber as part of the company's business.

"Uber drivers often work very long hours just to earn enough to cover their basic living costs. It is the work carried out by these drivers that has allowed Uber to become the multi-billion-dollar global corporation it is."

Maria Ludkin, legal director of the GMB trade union, which backed the drivers, described it as a "monumental victory."

"This will have a hugely positive impact on over 30,000 drivers in London and across England and Wales and for thousands more in other industries where bogus self-employment is rife," she continued.

As part of the proceedings, the tribunal heard from two Uber drivers who insist that Uber should guarantee the national minimum wage and holiday pay. James Farrar, one of the drivers, said that he had earned far less than legal requirement during the hours that he had worked.

"They claim that, based on the total number of hours logged into the app, I have been paid £13.77 on an average hourly basis," Farrar, who has been an Uber driver since 2014, wrote in a witness statement. "I calculated my net earnings for August 2015 after the expenses I set off and they came to £5.03 an hour."

The minimum wage at the time was £6.70 an hour. Uber's lawyer said that in that month Farrar had spent a long time logged into the app but had not accepted or cancelled more jobs than normal, thereby reducing his hourly pay.



Uber has faced repeated protests in London from taxi drivers CREDIT: GETTY

While the ruling tests the gig economy, the outcome of the hearing will only affect the two drivers named in the case, one of whom is no longer a driver with the company.

Uber, which is valued at \$62.5bn (£51.5bn), said that in September 2016 its drivers received an average wage of £16 an hour after the company's service fee for using its app. In the same period, 20pc of Uber's drivers were logged into the app for 10 hours or less a week, and only 25pc were logged in for 40 hours or more.

The company has long championed its flexible offering to drivers, which does not require them to log in for a minimum number of hours or restrict them to working for Uber alone.

Britain isn't the first country where the ride sharing app has faced challenges to its model. Around the world it has been met with protests, bans and restrictions in several cities, including an ongoing battle with traditional black-cab drivers in London.

Headquartered in the Netherlands, Uber has previously contested that UK drivers should seek arbitration in Dutch courts.

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