Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

17 NOVEMBER 2025

MEDIA RELEASE

RASIER OPERATIONS BV AND OTHERS v E TŪ INCORPORATED AND ANOTHER

(SC 105/2024) [2025] NZSC 162

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

What this judgment is about

This appeal concerns whether four Uber drivers are Uber's employees in terms of the definition of "employee" under section 6 of the Employment Relations Act 2000 (ERA).[1] Employment status under the ERA is the gateway to important rights and obligations for employees and employers, including entitlements such as minimum wage, holidays, parental leave, sick leave, bereavement leave and the rights to unionise and bargain as a collective.

Background

Uber operates two platform businesses in New Zealand. The "Rides" platform connects members of the public to drivers for purposes of on-demand transport. The "Eats" platform connects members of the public, restaurants and drivers for purposes of food delivery.[2]

On behalf of four Uber drivers, the respondents (two unions) sought a declaration that four drivers are Uber's employees when they have signalled their availability for work by logging into the Uber Driver app. The drivers succeeded in the Employment Court and Court of Appeal.

On 19 December 2024, the Supreme Court granted Uber leave to appeal the decision of the Court of Appeal. The approved question was whether the four Uber drivers are employees in terms of section 6 of the ERA.

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1 This media release collectively refers to the Uber companies as "Uber".

2 The parties agreed that the Supreme Court did not need to consider the Eats platform because the status of drivers on it was not relevantly distinguishable from that of drivers on the Rides platform.

Section 6 of the ERA defines an "employee" as someone who is "employed by an employer to do any work for hire or reward under a contract of service". When assessing whether an employment relationship exists between two parties, the court is required to "determine the real nature of the relationship between them".

Uber denied that it hires drivers to work for hire or reward at all. Uber's contracts with drivers and riders say that Uber only supplies the digital platform that then enables drivers and riders to connect and form their own business relationships. Uber argued that it does not itself provide passenger transport services. If however the Supreme Court rejected that argument, as had the Courts below and courts in some other jurisdictions, then Uber submitted that drivers are independent contractors, not employees. It said it does not control drivers, who choose their working hours and may use competitors' platforms; it has not integrated drivers into its business; and in substance drivers operate their own businesses.

Supreme Court decision

The Supreme Court has unanimously dismissed Uber's appeal.

Does Uber engage drivers to provide passenger transport services?

The Court unanimously found that Uber engages drivers to deliver passenger transport services to users. There is no pre-trip contact between rider and driver. Instead, Uber offers a rider the fare for the trip and the rider accepts that offer. Neither drivers nor riders can effectively select one another, and they are practically anonymous vis-à-vis one another throughout the entire transaction. Uber earns its revenues by charging riders for trips, and resolves any difficulties which might arise during each trip. A passenger could not reasonably be expected to think they were contracting with the driver when they got into the car (at [98]–[114] and [184]).

Did the Employment Court err in its interpretation of "employee" in section 6 of the ERA?

Normally, a court will establish the terms of the contract and its workings in practice before deciding whether the real nature of the relationship is one of employer and employee. The parties' common intention is to be ascertained from any relevant matters that evidence it, and indications of their intention will normally be found in the terms of the contract. However, Winkelmann CJ, Williams and Miller JJ determined that no weight needed to be given to terms in Uber's "take it or leave it" contracts which disguised the reality of the parties' relationship (at [73], [75] and [86]).

The Court unanimously agreed with the Court of Appeal that inequality of bargaining power may not enlarge the meaning of "employee". To that extent the Employment Court had erred. However, inequality of bargaining power may explain why a contract does not reflect the real nature of the relationship (at [89], [91] and [171]–[172]).

Winkelmann CJ, Williams and Miller JJ found that the Court of Appeal did not misinterpret the meaning of "employee" in section 6 of the ERA, nor the Supreme Court's earlier employment law decision in *Bryson v Three Foot Six Ltd* (at [93]).[3]

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3 *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721.

Are Uber drivers employees or independent contractors?

Winkelmann CJ, Williams and Miller JJ were not persuaded that the following findings of the Courts below were wrong (at [142]–[143]):

(a) Uber exercises very close control over every aspect of drivers' delivery of its passenger transport services. It chooses how they perform, including route selection; it monitors performance; and it polices their behaviour. It exercises control while they are on the app, not merely in the period between acceptance and completion of trips.

(b) Drivers are not closely integrated into Uber's business in the traditional senses that they must attend its premises, wear uniforms and submit to human resources supervision. But once it is accepted that Uber delivers passenger transport services to riders, drivers must be considered integrated in a more substantive sense. They are the face of Uber's business, and the relationship between Uber and its drivers is one of co-dependency.

(c) There are some indications that drivers are in business on their own account but their lack of control over the quantity and quality of work they receive, the price they are paid for it, and their inability to build goodwill point strongly to the conclusion that they are not.

Accordingly, the Courts below did not err by finding the four drivers were Uber's employees.

Concurring reasons

Glazebrook and Ellen France JJ agreed in the outcome. They took the view, however, that both Courts below erred in law. In particular, the Court of Appeal was wrong to effectively discount the parties' common intention, to divide the inquiry into two stages, and to only examine the relationship at times when drivers were on the Driver app (at [173]–[177]).

Having found the Court of Appeal erred, Glazebrook and Ellen France JJ held that the task was to determine whether the four drivers were employees, as the parties did not ask for the proceeding to be remitted to the Employment Court. In their view, this required ascertaining the real nature of the relationship using the common law tests, including intention (at [178]).

After conducting that analysis, Glazebrook and Ellen France JJ found that the four drivers were employees. This was because the factors pointing away from employee status (including intention, the drivers' ability to choose their hours of work and to work for others, plus vehicle ownership) were outweighed by those pointing towards it (including integration, control and the lack of realistic ability for the drivers to develop their own Uber businesses) (at [189]).

Result

A The appeal is dismissed.

B The appellants must pay the respondents one set of costs of $50,000 plus usual disbursements. We allow for second counsel.

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