

Sacked Uber driver case shows driver vulnerability under law

Written by The Conversation

Perth Uber driver, Mike Oze-Igiehon, is suing Uber in the District Court for damages after it terminated his contract. The outcome of this case may shed some light on status of drivers in the eyes of the law.

The main issue is whether or not uber drivers are classified as employees and therefore entitled to the usual Fair Work protections or whether they are independent contractors, able to access rights to unfair contracts review [by the Federal Court](#)

If the [newspaper reports are accurate](#) , Mr Igiehon has been advised to bring a contract claim in the District Court. He will need to argue that Uber breached its contract with him and that this caused his loss.

The news reports allege that Uber “blocked” him because of bad reviews from customers, so Uber is claiming that it had a right to terminate the contract with no notice. If the terms of the contract say that Uber can terminate only with reasons, Uber will have to prove it had a sufficiently serious reason to warrant terminating the contract.

If Mr Oze-Igiehon can show that Uber had no right to terminate, the District Court could award him damages for what he has lost as a consequence of this wrongful termination, including some of the costs of his car loan. Until the court has heard the case, it is impossible to assess the likelihood of success, but one thing is clear, this avenue for redress of shabby treatment is expensive and risky for the worker.

The trouble with contract law is it favours the person who decided what terms to put into the contract. It is unlikely in the extreme that the Uber drivers have negotiated fair terms for themselves.

What if Mr Oze-Igiehon had decided instead to rely on the [Independent Contractors Act 2006](#) ? He may have persuaded the Federal Court to vary his contract if it did include a term allowing Uber to terminate the contract immediately, without warning or a chance to explain, when they knew he had a large debt to service his vehicle loan.

This happened in litigation [between Riteway Transport and some of its drivers](#) . The benefit of unfair contracts review is that exploitative contracts can be rewritten, but cases still need to be litigated at some expense and delay before a federal court.

If Mr Oze-Igiehon were an employee of Uber, he could bring an unfair dismissal claim, but only if he had been driving for the minimum qualifying period (of six months, since Uber is not classified as a small business). Uber would need to show that it had a valid reason for dismissing him, and that they followed fair procedures in investigating the complaints.

The unfair dismissal system is quick (applicants must file a complaint within 21 days), and relatively cheap. The Fair Work Commission (FWC) first attempts to resolve the complaint by a telephone mediation.

However only employees can go to the FWC. It is a live issue whether Uber drivers in Australia could establish that they are employees, and whether they would even want to try.

We apply a multi-factor test in Australia to decide whether a worker is an employee or not. Organisations like Uber are generally very careful to set up their arrangements so that their work contracts avoid characterisation as employment. They seek to avoid any conclusion that they control the worker, by leaving it up to the worker whether to accept any work or not.

Requiring the worker to meet all of the substantial costs of providing the vehicle is – ironically – a factor that tends towards a finding that the worker is not an employee. Taxi drivers are not considered to be employees in Australia either. They are typically treated as “bailees” – people who have taken possession of a vehicle for the purpose of earning income.

An alternative approach to trying to squeeze digital economy work contracts into the mould of the employment contract, would be to regulate specifically for this kind of contract. Just as there is specific regulation for taxi drivers.

Regulation to ensure minimum rates of pay, and protection from capricious termination of their contracts would go some way to ensuring that these workers are not exploited.

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[English: Uber driver who was fired for not wearing a seat belt has disclosed model from affiliation pay, not](#)