

'A Hundred Pages of Disputes': UberBLACK Drivers' Wage Class Action Gets Another Go-Round

Third Circuit Judge Joseph Greenaway said in Tuesday's precedential opinion that the case was prematurely dismissed because questions remained about the level of control Uber has over its drivers.

By P.J. D'Annunzio | March 03, 2020 at 04:49 PM

Uber headquarters Uber headquarters in San Francisco. (Photo: Jason Doiy/ALM)
Citing a host of unresolved factual disputes in the case, the U.S. Court of Appeals for the Third Circuit has revived an employment class action filed by UberBLACK drivers who claim the ride-sharing company failed to pay them minimum wage.

At the heart of the dispute, the dismissal of which was reversed by the Third Circuit on Tuesday, is whether the drivers should be classified as independent contractors or employees under law.

The drivers of Uber's luxury ride component claim that as employees, they're entitled to a minimum wage under the Fair Labor Standards Act. But a Philadelphia-based federal judge granted summary judgment in favor of Uber, which argued that the drivers were independent contractors exempt from an hourly wage.

However, Third Circuit Judge Joseph Greenaway said in Tuesday's precedential opinion that the case was prematurely decided because questions remained.

"Uber submitted a statement of undisputed material facts to which plaintiffs responded with almost a hundred pages of disputes. For example, disputed facts include whether plaintiffs are operating within Uber's system and under Uber's rules, and whether plaintiffs or their corporations contracted directly with Uber," Greenaway said.

Another issue was whether Uber exerted control over its drivers.

"While Uber categorizes drivers as using the Uber App to 'connect with riders using the UberBLACK product,' which may imply that drivers independently contract with riders through the platform, plaintiffs contend that this is not so," Greenaway said. "Uber also contends that drivers can drive for other services while driving for Uber, however plaintiffs contend that while 'online' for Uber, they cannot also accept rides through other platforms. Plaintiffs reference Uber's Driver Deactivation Policy that establishes that 'soliciting payment of fares outside the Uber system leads to deactivation' and 'activities conducted outside of Uber's system—like anonymous pickups—are prohibited.'"

Other disputes remained as well, such as whether drivers could control profit and loss through managerial skill, according to Greenaway.

"The district court, in this case, ruled that this factor strongly favored independent contractor status because drivers could be strategic in determining when, where, and how to utilize the Driver App to obtain more lucrative trip requests and to generate more profits," Greenaway said. "Plaintiffs could also work for competitors and transport private clients. However, other material facts reveal that there was and still is a genuine dispute. For example, Uber decides (1) the fare; (2) which driver receives a trip request;

(3) whether to refund or cancel a passenger's fare; and (4) a driver's territory, which is subject to change without notice."

Robert Pritchard of Littler Mendelson in Pittsburgh argued Uber's case in the Third Circuit and did not respond to a request for comment.

Jeremy Abay of Sacks Weston Diamond represents the plaintiffs.

"This was the first court of appeals case to address the misclassification of gig economy workers under the FLSA, and it resulted in a resounding loss for Uber," Abay said in an email. "What is more, the Third Circuit ruled against Uber after reviewing a full record. We look forward to dismantling Uber's 'driver-partner' facade before a jury."