

**PARIS CONSEIL DE
PRUD'HOMMES
(EMPLOYMENT TRIBUNAL)**
27 Rue Louis Blanc
75484 PARIS CEDEX 10
Tel.: 01.40.38.52.00

**FRENCH REPUBLIC
IN THE NAME OF THE FRENCH PEOPLE**

JUDGMENT

on the lack of subject-matter jurisdiction
Ruling at first instance and in contested proceedings

Delivered at the hearing on **28 June 2018** by his Honour, the
Presiding Judge, assisted by Ms Béatrice LENERAND, Registrar

Hearing held on **22 May 2018**

Composition of the adjudication panel during the hearing and
deliberation:

Mr Côme CROCÉ-SPINELLI, Presiding Judge Tribunal Member
(Employer)

Mr Michel VAIDIE, Assessor - Tribunal Member (Employer)

Ms Stéphanie MISTRE, Assessor - Tribunal Member (Employee)

Ms Astride KAMARA, Assessor - Tribunal Member (Employee)

Assisted during the hearing by Ms Béatrice LENERAND, Registrar

**SECTION
Commercial chamber 4**

File No. F 17/04674

**NOTIFICATION by letter with
acknowledgement of receipt:**

Issued
to the applicant on:

to the respondent on:

ENFORCEABLE COPY
issued to:

at:

APPEAL No.

submitted by:

on:

by letter with acknowledgement of
receipt
to the court registry

BETWEEN

Mr Maxim ilien PETROVIC

born on 4 July 1959

Place of birth: BIGRENICA (YUGOSLAVIA)

TO MS PETROVIC

71 AVENUE DE FLANDRE

75019 PARIS

Assisted by Attorney Fabien MASSON G106 (Attorney at the Paris
Bar)

APPLICANT

AND

SAS UBER FRANCE

PARC DU PONT DE FLANDRE

11 RUE DE CAMBRAI

75019 PARIS

Represented by the SCP BREDIN PRAT

SARLUBERBV

VUZELSTRAAT 68 78

1017 HL AMSTERDAM

PAYS BAS

Represented by the SCP BREDIN PRAT

RESPONDENTS

PROCEDURE

- Referral to the Tribunal on 20 June 2017.
- Summons served to the respondent, by simple and registered letters received on 5 July 2017, to the conciliation hearing to be held on 20 December 2017.
- Referral to the Final Hearing of 22 May 2018.
- The parties' attorneys filed submissions.

CLAIMS:

Hold that the conditions of partnership and the acceptance of a fare form a transport service contract,

Hold that, during the execution of each transport service contract, the applicant was under a subordinate relationship with the companies Uber France and Uber BV, To accept jurisdiction,

Re-classify the 2,038 fixed-term contracts carried out as permanent employment contracts,

Hold that the termination of the employment contract produces the effects of dismissal without just and serious cause,

Hold that the National Collective Agreement on Transport applies to this matter,

Set the monthly gross remuneration at €4,397.11

Compensation for worked Sundays:	€580.86
Meal allowance	€1,473.52
Meal allowance for night service.....	€96.60
Allowance for night work	€1,087.05
Overtime hours.....	€24,431.03
Related annual leave	€2,431.00
Back payment of compulsory compensation for overtime hours in excess of the annual limit	€11,045.19
Damages for non-compliance with maximum working time	€8,468.95
Damages for undeclared work	€50,813.70
Compensation for notice period.....	€2,117.00
Related annual leave	€211.00
Damages for unfair dismissal.....	€16,937.90
Article 700 of the French Code of Civil Procedure	€3,500.00
Interim enforcement	
Capitalisation of interest	
Costs	
<u>Counter claim:</u>	
Article 700 of the French Code of Civil Procedure	€1,000.00

GROUND'S BASED ON FACT

Particulars of applicant's submission

Mr Maximilien PETROVIC explains that he entered into a binding relationship with the UBER company as a driver by means of his submission to the general terms and

conditions enacted by this company entitled "Terms of Partnership" as well as the charter entitled "Uber Community Charter". It is in this way that Mr Maximilien PETROVIC began working for UBER on 12 October 2016 after having signed a first lease agreement with a partner of UBER (Voitures Noires).

Mr Maximilien PETROVIC states that during his employment relationship he received e-mail ratings on the quality of service he provided, recommendations on conduct with customers as well as unilateral fare adjustment decisions.

Mr Maximilien PETROVIC indicates that throughout his working relationship with UBER, from October 2016 to April 2017, he received a weekly "payment summary" and a "weekly report of activities".

Mr Maximilien PETROVIC informed the Tribunal that without any explanation, UBER permanently deactivated his UBER account depriving him of the possibility of receiving new booking requests.

Mr Maximilien PETROVIC indicates that he asked UBER for the reasons substantiating this deactivation and that the only explanation given to him is that this decision was taken after a thorough study of his case.

Mr Maximilien PETROVIC appealed to the Employment Tribunal on 20 June 2017, to challenge the conditions of this termination, which he considers to be an unfair dismissal, and to request the re-qualification of his employment relationship with UBER as permanent employment contract covered by the provisions of the National Collective Convention on Transport.

Particulars of respondent's submission

UBER explains that since 1 July 2013 UBER BV, whose head office is located in Amsterdam, enters into contracts exclusively with independent transport professionals (translator's note: independent contractors); the purpose of these contracts is to enable partners to use the UBER application and thereby be placed into contact with potential customers.

UBER states that it concluded with Mr Maximilien PETROVIC, holder of a tourist's driver licence and which is registered in the register of operators of passenger cars with a driver, a commercial partnership allowing him to secure fares through the UBER application, which started on 12 October 2016 and ended on 2 April 2017.

UBER states that the partnership with Mr Maximilien PETROVIC was beset by difficulties related to serious and repeated breaches of the rules governing the use of the application which forced it to deprive M. Maximilien PETROVIC of access to the application and thus put an end to the commercial partnership.

UBER concludes by stating that the presumption of non-wage employment is applicable in this case and claims that this Court lacks jurisdiction and the matter should be heard by the Commercial Court of Paris.

GROUNDS IN LAW

On 28 June 2018, the Tribunal, after having deliberated according to the law, handed down the following judgement:

Whereas in application of the provisions of Article 9 of the French Code of Civil Procedure, each party has a burden to prove, in accordance with the law, the facts necessary for the success of its claim,

Whereas Article L1235-1 of the French Labour Code specifies that it is the Judge, in case of dispute, who assesses the regularity of the procedure followed and the real and serious nature of the grounds invoked by the employer and forms the basis of his judgement on the evidence provided by the parties,

Whereas Article L 8221-6 of the French Labour Code provides that "the following are presumed not to be bound to the principal by means of an employment contract in the performance of the activity giving rise to registration or inscription: 1. Natural persons registered in the trade and companies register, in the trades register, in the register of commercial agents or the Social Security and Family Allowance Contribution Collection Offices (Urssaf) for the recovery of family allowance contributions." The existence of an employment contract may, however, be established when the persons mentioned in point I provide, directly or through an intermediary, a service to a principal under conditions which place them in a permanent legal subordination relationship, with respect to the latter."

Whereas Article L1411-1 of the French Labour Code stipulates that the Employment Tribunal shall settle by conciliation disputes that may arise concerning any employment contract subject to the provisions of this Code between the employers, or their representatives, and the employees that they employ. The Tribunal hears the disputes when the conciliation was not successful.

Whereas Article 92 of the French Code of Civil Procedure stipulates that lack of jurisdiction can be declared in case of infringement of a rule on jurisdiction *ratione materiae* where such rule pertains to public policy.

On the jurisdiction of the Employment Tribunal:

Whereas in accordance with the adversarial principle and in application of the provisions of Articles L. 444-1 of the French Labour Code and Article 92 of the French Code of Civil Procedure, it follows that if the Tribunal were to consider that the relationship between the parties must be viewed as an employment contract, it would then be appropriate to hear the claim submitted regarding the re-classification, but if the Tribunal were to consider that the relationship between the parties was that of a commercial nature, then it would be appropriate to declare that it lacked jurisdiction and the matter should be referred to the Commercial Court.

On the re-classification of the contract concluded:

Whereas Mr Maximilien PETROVIC considers that the mere fact of accepting the fare offered by the UBER mobile application created, *de facto*, a subordinate relationship during the fare, between him and UBER and that as such the 2038 fares that he carried out between 12 October 2016 and 7 April 2017 must be held as a micro employment considered as successive fixed term contracts,

Whereas Mr. Maximilien PETROVIC was registered in the register of operators of passenger cars with a driver on 26 September 2016 under the number: EVTC075167678 and that on 28 September 2016 he was registered in the SIRENE directory under number 351 350 673 00056,

Whereas Mr Maximilien PETROVIC concluded a partnership agreement with UBER BV under which it is stated that "the customer (the partner) recognises and agrees that the provision by UBER to the customer of the UBER driver application and services creates a direct legal and commercial relationship between UBER and the customer... The customer and his drivers exclusively retain the right to determine when and for what length of time to use, for each of them, the UBER driver application or services... The client acknowledges and accepts full discretion to carry out his activity in an independent manner... ",

Whereas according to these terms, UBER's business model is based on intermediation between transport operators and users who wish to benefit from transport services in accordance with the provisions of Article L3122-1 of the French Transport Code,

Whereas according to the provisions of that contract, various provisions therein make it possible to determine the framework in which this service was performed, namely: - no control over working time was carried out by UBER with regard Mr Maximilien PETROVIC who had no obligation of attendance or duration of connection, retaining the freedom to accept or refuse a fare and to disconnect from the application at any time, - ability to secure fares for a competing company with the possibility of using other competing intermediation platforms, - absence of control over the duration, or working hours by using the application,

Whereas these provisions, which do not contain any exclusivity or non-compete clause and which granted Mr Maximilien PETROVIC the freedom to independently determine the time slots during which he wished to work, or to select no such slots if he did not wish to work with UBER, reveal no relationship of subordination or economic dependence with this company,

Since it follows from these observations that the relationship between Mr Maximilien PETROVIC and UBER, both in their intent and in their execution, took place within the agreed commercial framework, the Tribunal can only conclude that it lacks jurisdiction *ratione materiae* and that the matter must be referred to the Commercial Court of Paris which has sole jurisdiction to determine the due performance by the parties of their contracts.

Whereas in application of the provisions of Article 696 of the French Code of Civil Procedure, the Tribunal orders the applicant to pay all costs of the proceedings,

FOR THESE REASONS

The Tribunal ruling in a public hearing, in a decision deemed to have been made after due hearing of the parties, in the first instance:

The Tribunal declares the contract is commercial in nature
Holds that the Employment Tribunal lacks jurisdiction and that the matter must be referred to the Commercial Court of PARIS

Beatrice LENERAND,
CLERK,
JUDGE,

TRUE CERTIFIED COPY
The Clerk in Che

Côme CROCE-SPINELLI,
PRESIDING

