IN LIMINE RULING

Commissioner: Ms Winnie Everett
Case No.: **WECT12537-16** and including:
WECT10875-16
WECT14948-16
WECT875-17
WECT1503-17
WECT12614-16

Date of Ruling: 7 July 2017

In the In Limine Matter between:

Uber South Africa Technological Services (Pty) Ltd	**Applicant**

and

NUPSAW and SATAWU obo Tsepo Morekure, Derick Organsie and Lee Stetson Carl De Oliveira	**First Respondent**
Joseph Munzvenga	**Second Respondent**
Khotso Morekure	**Third Respondent**
Felicien Nzisabira	**Fourth Respondent**
Delice Ndayajehwo	**Fifth Respondent**
Guylani Alomyi	**Sixth Respondent**

Applicant's representative:	**Mr Alec Freund, Adv. SC**
	Mr GA Leslie, Adv.
Briefed by:	**Ms G Lumb, Attorney**
	Cliffe Dekker Hofmeyr Inc
Applicant's address:	11 Buitengracht Street
	Cape Town, 8000
Telephone:	021 4816315
Email:	Sharon.May@cdhlegal.com

Only signed awards that contain the CCMA approved watermark are authorised. |CaseNumber|
Page 1 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

Gillian.Lumb@cdhlegal.com

Respondents' representative:	**Ms Susanna Harvey, Adv.**
Briefed by:	**Prof D Du Toit**
Respondent's address:	c/o PO Box 1621
	Cape Town, 8000
Telephone:	021 4619410
E-mail:	darcy@bchc.co.za

Third Respondent:	**Mr Khotso Morekure**
	51 Mountain Road
	Woodstock, 7925
Telephone:	082 453 3226
E-mail:	khotsomorekure@gmail.com

PARTICULARS OF PROCEEDINGS AND REPRESENTATION

1) The applicant in this matter, a challenge to the CCMA's jurisdiction to arbitrate a number of individual unfair dismissal disputes, is Uber South Africa Technologies (Pty) Ltd. The applicant was represented by Mr Alec Freund, Adv, SC and Mr GA Leslie, briefed by Cliffe Dekker Hofmeyr Inc.

2) The respondents are as cited on the cover sheet. All were represented by Ms Suzanna Harvey, Adv briefed by Bradley Conradie Halton Cheadle, acting on a pro bono basis.

3) The matters of second, fourth, fifth and sixth respondents were consolidated (after conciliation) into the first matter, some as a result of my ruling and others by agreement. The consolidation is for the purposes of determining the in limine point only, and not the individual unfair dismissal cases.

4) This matter was previously set down for hearing on three occasions and each time a ruling was issued. At the last hearing on 15 March 2017, the respondents applied for joinder of the holding company Uber BV, based in the Netherlands, as second respondent in the unfair dismissal cases. I refused joinder on the basis of the Constitutional Court decision of *NUMSA v Intervalve (Pty) Ltd and others* [2015] 3 BLLR 205 (CC) in which it was held that employers not cited in the referral to conciliation cannot be joined in the Labour Court proceedings and referral to conciliation of an unfair dismissal dispute is an absolute pre-condition for adjudication. Due to the decision in *Intervalve* and despite CCMA Rule 26, it was not possible to join Uber BV as a second alleged employer at this stage of the proceedings. I also took into account the jurisdictional challenges of a respondent based in the Netherlands.

5) On that occasion, the respondents (the drivers), at the time were not legally represented, and had failed to comply with my directives to adduce affidavits in order for me to determine the in limine matter. Instead they applied to lead oral evidence, which application I granted and the matter was scheduled for hearing on 22 to 24 May 2017. Prior to that date, the respondents secured legal representation and the parties agreed to adduce answering and replying affidavits. The matter was argued before me for a full day on 19 June 2017.

6) This decision is accordingly based on the evidence on affidavit and the arguments submitted in writing and argued orally.[1]

7) The proceedings were digitally recorded.

---

[1] The bundles are voluminous and this decision was written under tight time constraints. While I have incorporated principles developed in case law, particularly South African case law, the relevant cases have not been consistently cited. In this regard, the Code of Good Practice: Who is an Employee? has effectively codified the South African case law on the issue.

Only signed awards that contain the CCMA approved watermark are authorised. |CaseNumber|
Page 3 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

ISSUE TO BE DECIDED

8) I must decide whether Uber drivers are employees of Uber Technologies South Africa (Pty) Ltd ("Uber SA") for the purposes of the Labour Relations Act 66 of 1995 as amended (LRA), as defined in section 213 of the LRA.

BACKGROUND

9) All the respondents, bar the third respondent, are drivers or partner-drivers for Uber. (I refer to Uber in the colloquial sense, as a well-known company and brand, without identifying whether the reference is to Uber SA or Uber BV, which is registered in the Netherlands. Even Uber markets itself as such and, for marketing purposes and in the eyes of the public, it does not distinguish between Uber SA and Uber BV. (Where necessary, I specify Uber SA and Uber BV.)

10) The drivers were all "deactivated" for one reason or another and they referred unfair dismissal disputes to the CCMA. As indicated above, the respondent in the dismissal cases, Uber SA, (although the drivers cited merely "Uber" in the referral forms) objected to the CCMA's jurisdiction in the unfair dismissal cases, claiming that the drivers were not employees of Uber BV with whom they have a contract, let alone Uber SA which is a subsidiary of Uber BV.

SURVEY OF EVIDENCE AND ARGUMENT

11) Based on the affidavits and argument, the following facts are not materially in dispute, or my finding (based on the evidence) is apparent:

Uber BV provides an app through which riders can request a driver to lift them to a destination of their choice. There are three types of persons involved in delivery of the transportation services:

1) The "partner only" owns one or more vehicles, but does not drive. Partners provide one or more vehicle for drivers to drive. The partner receives payment of fares less a fee deducted by Uber and the partner pays the driver.

2) A "partner-driver" is a partner vehicle provider who also drives a vehicle. As a partner, the partner-driver may appoint another to drive and, if so, that driver must be approved on the Uber app.

3) A "driver only" does not drive her vehicle or provide a car and drives a vehicle provided by a partner.

Only signed awards that contain the CCMA approved watermark are authorised. |CaseNumber|
Page 4 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

(For ease, I refer to partners as males with the associated pronouns, and drivers as females, with the associated pronouns.)

12) This case concerns drivers who are either partner-drivers or drivers only, drivers being at liberty to move between these categories at will. The respondents claim that drivers, even if also partners, are employees when they drive, and they do so as employees irrespective of whether they own or in some other manner secure a vehicle to drive.

13) Uber BV is registered in the Netherlands. Uber SA operates in South Africa. The contracts are concluded with BV, but there are various communications which come from Uber South Africa and Uber Cape Town.

14) I believe it is helpful to summarise the facts by summarizing the "life cycle", so to speak, of a relationship between Uber and a driver. The relationship starts with a process of being on-boarded. This process involves registration on the app, approval of the vehicle the driver will use, documentation regarding the identity and status of the driver, obtaining a PDP license, a standard business plan produced by Uber; a training or information session at Uber Cape Town offices where the driver is informed how to use the app and the standards required of Uber drivers. The partner (or partner-driver) clicks to indicate acceptance of the terms of the agreement. The agreement is detailed and dense, and it identifies partners (and partner drivers) as independent contractors.

15) Once the driver has met all the requirements, she becomes active and can start driving. Drivers may choose when they wish to drive by logging on and off on the app. There is no minimum amount of time they should drive per day, week or month. However, if they are inactive, they are "archived" and can be reactivated when they again become active.

16) A rider requests a ride on the app after creating a profile. The rider specifies the pick-up point. The rider is advised of the approximate fare and the estimated time of arrival. The rider receives the driver's name, a photo of the driver and the vehicle registration number.

17) In the meantime, the closest driver is notified of the ride and has the option to accept, reject or ignore the request. If she accepts, the driver collects the rider and at that point discovers the destination. The driver is advised only of the rider's first name and the pick-up point. The rider and the driver may cancel the trip but drivers are required to avoid cancelling more than the average (for the city in question) to prevent being deactivated. Uber maintains that at this point the rider contracts the driver directly.

18) The driver drives the rider to the destination. (Uber maintains that the rider determines the route; the respondents maintain that they are required to drive as per the GPS with minimal deviation). Uber through the app deducts the fare from the rider. Uber then deducts its fee (originally termed a commission) and pays the balance to the partner. The partner may deduct a fee for use of his vehicle

Only signed awards that contain the CCMA approved watermark are authorised. |CaseNumber|
Page 5 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

and the driver receives the balance from the partner. However, each driver receives a statement of income generated for the week, detailing the hours she was logged on and the fares earned. Uber even generates an invoice on behalf of the driver. There is an incentive payment to drivers in certain circumstances.

19) Uber sets performance standards in the form of an average rating by riders and they are required to maintain an average rating of 4.3 in Cape Town (this may vary from city to city). From time to time, drivers are given suggestions on how to improve their ratings and if the rating starts to drop, they are warned of this. If there is no improvement, the driver may be deactivated and she may go for top up training to improve her ratings and in this way be reactivated. Drivers' acceptance of trips is monitored and too many cancellations may also lead to deactivation.

20) Uber has not always had, but now has, a deactivation policy for the Sub-Saharan African region. The policy sets out the reasons why a driver may be deactivated and the steps that will precede deactivation. It is the driver who is deactivated, not a partner only, and this occurs directly from Uber BV. As is clear from the affidavit of Morekure and the supporting documents, partners have no control over deactivation.

21) Prior to deactivation, the driver is advised that her average rating by riders has fallen, or that she has higher cancellations than average, and given suggestions to improve. If there is no improvement, deactivation follows in the form of a simple notification to the driver that she has been deactivated.

22) The final stage in the life cycle is that if a driver is in dispute with Uber, the service agreement provides that the laws of The Netherlands apply and disputes may be resolved by submission of the dispute to the International Chamber of Commerce for Mediation and Arbitration.

Heads of argument:

23) The arguments were lengthy and they were submitted in writing and orally, and they contained detailed reference to South African and international case law. For the purposes of this ruling, I summarise only the key aspects of the arguments and, where necessary, refer to them in the analysis.

24) **Uber argued** that drivers are not employees of Uber BV, and as Uber SA is ancillary to Uber BV, it follows that they are also not employees of SA. Uber listed six considerations which, it argued, made it clear that drivers are not employees.

25) First, there is no legal obligation on the part of any driver to drive any Uber registered vehicle or to use the Uber App, as is clear in the Uber BV service agreement. Second, there is also no right to instruct a driver to drive his vehicle, and the driver has a choice of where to drive and which passengers to

Only signed awards that contain the CCMA approved watermark are authorised. |CaseNumber|
Page 6 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

transport. Third, a partner-driver may employ another driver to drive. Fourth, drivers are free to work whenever they like on anything else, including direct competitors. Fifth, the partner (and not Uber) is required to supply a vehicle and to carry all associated expenses. This is the essential tool of the trade and it is not provided by Uber. Sixth, the risk of profit or loss is borne by the partner as an independent contractor. Finally, a driver is free to move from one partner to another.

26) Uber also argued that the starting point is the contract and it is clear that drivers are not employees of Uber BV, let alone Uber SA which is not a party to the contract. In terms of the contract, Uber BV allows access to its technology via the app and in return it has the right to deduct a fee from the payment and remit the balance. The contract could only be ignored if it was a sham, drafted to conceal the real agreement.

27) **The respondents argued** that riders do not contract independent drivers, but Uber, and it is Uber that issues a receipt for its services. It is necessary to distinguish Uber from, for example, Airbnb where the customer knows that he or she is contracting with the guesthouse owner.

28) Drivers maintained that Uber controls them in a number of ways: They are required to personally perform their tasks; Uber controls their conduct and how they do the work through a system of ratings by the customer and policies regarding cancellation rates; Uber controls the actual conditions under which business is done, including pricing and the number of drivers in a city or at specific locations such as the airport. Drivers would control this if they were independent contractors; they would determine where and how to place themselves in the market.

29) Uber exercises extensive control over driver conduct; how drivers must do the work. Although characterised as help or tips, this construction falls apart in the light of Uber's power to deactivate drivers and prevent them from earning an income. The power to terminate the working relationship is the ultimate control and this is what attracts the protections of the LRA.

30) The drivers maintained that Uber controls their performance and even have incentive schemes. One driver who was aggrieved with the application of the incentive scheme negotiated with Uber SA to have it apply to him.

31) A driver may not allow another to drive on their account and driving must be performed personally. The fact that a driver may also own a vehicle and get another person to drive it does not mean that, when she is driving, she is not an employee.

32) The confusion between Uber SA and Uber BV is precisely the situation that sections 200B and 198 of the LRA seek to address by providing for joint and several liability. The local subsidiary of an international company must be regarded as the employer to avoid severe disadvantage to South Africans working for foreign companies. An ordinary driver could not have insight into inter-company

Only signed awards that contain the CCMA approved watermark are authorised.

|CaseNumber|
Page 7 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

arrangements and Uber SA presents itself as Uber for all intents and purposes. The Uber office in Cape Town has a general manager, with whom some drivers actively engage, and emails come from an Uber Cape Town email address.

ANALYSIS OF EVIDENCE AND ARGUMENT

33) The world of work has changed considerably over the last few decades and it continues to change with formal full-time employment on the decrease. Part-time employment, outsourcing and casualization have been features of our labour market even at the time that the Labour Relations Act 66 of 1995 was passed, while the gig economy has provided new opportunities for otherwise unemployed people to earn an income. The line between who is employed and who is not is increasingly blurred as relationships have become largely anonymized, internationally and intra-nationally.

34) In South Africa and internationally, judges and arbitrators are required to categorise the increasingly nebulous group of workers into one of the two categories. It was argued by the drivers that the real question is who we as a society wish to protect in the form of employment laws, as Paul Benjamin has argued.[2] The counter-argument is that this falls into the scope of the legislature to determine and again, the reply is that the legislature has already done so in the form of the amendments to the LRA and in provision for the Code of Good Practice: Who is an employee? issued by NEDLAC.[3] (In this regard, see again Paul Benjamin's article.)[4]

35) It is not in my power to pronounce on the deservedness of labour law protections such as maximum hours, sick leave, workers' compensation, and my role is limited to determining whether Uber drivers are employees for the purposes of the Labour Relations Act, in particular the right not to be unfairly dismissed (although other rights such as the right to collective bargaining and to strike, contained in the LRA, would follow). This involves a proper interpretation of the Labour Relations Act and the Constitution and application of the Code of Good Practice: Who is an employee?

36) Section 213 of the Labour Relations Act defines an employee as

   a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

   b) any other person who in any manner assists in carrying on or conducting the business of an employer.

---

[2] Benjamin, Paul "An Accident of History: Who is (And Who Should Be) an Employee Under South African Law" (2004) 25 *ILJ* 787.
[3] GenN 1774 in GG 29445 of 1 December 2005.
[4] Ibid.

Only signed awards that contain the CCMA approved watermark are authorised.

|CaseNumber|
Page 8 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

37) Part b) of the definition is broad enough to include Uber drivers. It is fairly obvious that the drivers assist in the business of Uber, which has a worldwide reputation as a provider of lifts for people wanting a ride, and not vice versa.

38) Part a) requires the payment of remuneration. Uber drivers receive the fare less the fee deducted by Uber and, in the case of drivers only, less the amount the partner deducts for the use of the vehicle. Importantly, the definition excludes independent contractors. It is the line between independent contractors and employees that our courts and arbitrators have grappled with.

39) In so-doing, several tests have been developed to indicate the existence or not of an employment relationship. These include the control test, the organizational test, the economic dependence test and the dominant impression test. In my view, the tests used to distinguish between employees and independent contractors have become largely unhelpful, and in many instances key aspects of the tests point to employment, and others point to independent contracting.

40) No single test is decisive, nor even consistently preferred by our courts, although control or supervision have repeatedly emerged as the most helpful determinants. The Code of Good Practice: Who is an employee? endorses the dominant impression test. The Code identifies various factors to be taken into account, and these factors are actually an embodiment of the various tests. Similarly, most of the factors in section 200A embody the same tests, and the presence of any one (along with earnings below the threshold) triggers the presumption of who is an employee in terms of the Labour Relations Act. [In this matter, the parties agreed that the presumption did not apply to each of the drivers and, as it is essentially a tool to determine onus rather than determinative of the relationship, the objection to the CCMA's jurisdiction was heard first, followed by the answering and replying heads of argument.] the drivers accordingly bear the onus of proving that they are employees for the purposes of the LRA.

41) Although not stated in so many words, the Code introduces a new comprehensive test, which includes as factors the past tests. This is the "reality of the relationship" test. This requires that, despite the form of the contract, a person deciding whether someone is an employee or an independent contractor must consider the real relationship between the parties. Item 52 states: "Courts, tribunals and officials must determine whether a person is an employee or independent contractor based on the dominant impression gained from considering all relevant factors that emerge from an examination of the realities of the parties' relationship."

42) I proceed to consider and make findings on the various factors identified in the Code of Good Practice: Who is an Employee?

Only signed awards that contain the CCMA approved watermark are authorised. |CaseNumber|
Page 9 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

43) Drivers render **personal services**. They must be on-boarded personally with the necessary personal details, licenses and applications. They drive in their own name and may not out-source driving to someone else. The relationship between Uber and the driver would terminate on death of the driver.

44) The relationship is **indefinite** as long as the driver complies with requirements. For example, the driver is required to electronically sign new policies and contracts before she may drive. The relationship is not dependent on achievement of a specific outcome.

45) Drivers are subject to the **control** of Uber. Drivers choose their hours of work and they may accept, decline or ignore a list request. However, Uber controls the manner in which they work by setting clear standards and performance requirements, (such as contained in the Deactivation policy. Uber has control in that it may suspend and deactivate access to the app, thereby depriving the driver of the opportunity to work and earn an income. Even though there is no direct or physical supervision, control is exercised through technology, to the point that even the movement of the cell phone can be detected, indicating reckless driving.

46) Uber argued that partners control their drivers. To some extent this is true because a driver cannot drive without a car and the partner has control of the car and the terms on which it is used for driving. But Uber retains control over the particular performance of each driver and it has the ultimate power to deactivate a driver, thereby depriving her of the opportunity to work and earn an income. The Code identifies at item 37 that: "A relevant factor would be the extent to which the employer exercises control over a decision to terminate the services of persons engaged by the sub-contractor."

47) If the driver does not meet the required standards, the driver is effectively dismissed. Uber also argued that each rider contracts with each driver for each trip. This is a fiction and is not a reflection of the real relationship between the parties. Riders choose Uber to provide them with a lift through one of its drivers. The rider has no interest in or say over which driver arrives. The driver has no say over the fare and is not aware of the destination until the rider is picked up. The driver has minimal knowledge of the rider's personal details and is prohibited from further contact in terms of the service agreement.

48) These factors indicate that the driver is by no means independent or running her own transportation business. The driver is very much at the mercy of Uber, and **economically dependent** on the ability to drive for Uber, an infinitely more powerful juristic person than the individual drivers.

49) Uber drivers are the essential part of Uber's service. The app is a tool to request and provide lifts but it is the drivers who provide the riders with what they want. Riders want rides, not technology, and app merely provides an extremely convenient and accessible tool for riders to get a lift and for drivers to provide one. As such, drivers are an essential part of the organisation which is Uber. If a customer complains, the complaint goes to Uber.

Only signed awards that contain the CCMA approved watermark are authorised.

|CaseNumber|
Page 10 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

50) The real relationship between drivers in South Africa is that Uber SA is the employer. Uber SA appoints them and assists them to obtain the necessary licenses. Uber SA approves the vehicle they will drive. The relationship between drivers and Uber BV is distant and completely anonymized. Uber BV provides the legal contracts, the technology, the collection and payment of monies, but it is Uber SA, the subsidiary and local company, that appoints, approves and controls drivers, and Uber'. It is at this point that drivers engage and occasionally negotiate.

51) I reject Uber's argument that the partner is the driver's employer, or that the rider contracts the driver directly as an independent service provider. The partner or vehicle owner merely provides a vehicle for a driver to drive and takes a fee in return. This is akin to a lease agreement, and examples of vehicles being leased to potential drivers on Gumtree demonstrate that there is no employment relationship. Furthermore, the partner has no say over the driver's deactivation or other controls implemented by Uber.

52) I am of the view that in applying the Code of Good Practice, in particular the realities of the relationship test, there is sufficient basis for finding that Uber drivers are employees of Uber SA. However, I accept that certain factors indicate that drivers are employees and others indicate that they are not and I accept that the identity of the employer is blurred. In the event that I have adopted what appears to be a broad or generous interpretation of section 213 of the LRA, I believe this is justified by the requirement to adopt an interpretation which is in compliance with the Constitution and which promotes social justice and effective dispute resolution.

53) Section 3 of the Labour Relations Act provides that any person applying this Act must interpret its provisions –

   a) To give effect to its primary objects;

   b) In compliance with the Constitution; and

   c) In compliance with the public international law obligations of the Republic.

54) The purpose of the Act is to advance economic development, social justice, labour peace and the democratization of the workplace by fulfilling the primary objects of this Act, which are

   a) To give effect to and regulate the fundamental rights conferred by section 23 of the Constitution of the Republic of South Africa, 1996;

   b) To give effect to obligations incurred by the republic as a member state of the International Labour Organisation;

   c) ….

   d) To promote

Only signed awards that contain the CCMA approved watermark are authorised.

|CaseNumber|
Page 11 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

i) Orderly collective bargaining;

ii) …

iii) …

iv) The effective resolution of labour disputes.

55) The Constitution provides that **everyone** has the right to fair labour practices. An interpretation which is in line with the Constitution and promotion of social justice is one which promotes the Constitutional values and the rights contained in the Constitution.

56) Promotion of social justice involves the balancing of power between those with resources and those who are in a weaker position in society. It involves protecting the rights of the weak and making it accessible to them to enforce their rights. An interpretation which promotes social justice must favour the drivers, who are in a considerably weak position when compared to Uber. Drivers' ability to earn an income is dependent on access to the app and the ability to drive. They are not independent contractors in any true sense and they are in fact highly dependent on Uber for work.

57) The contract they "sign" using technology requires arbitration in The Netherlands to enforce any dispute arising from the contract. A social justice or Constitutional interpretation of section 213 of the LRA would not support such a dispute resolution process nor a construction which makes Uber BV in the Netherlands the employer. The right to fair labour practices is worth nothing if it is not enforceable, and dispute resolution processes in The Netherlands make it effectively impossible for a driver based in South Africa to challenge the international company. Uber BV provides technology but the real relationship between drivers in South Africa is with Uber SA.

58) Uber referred to the company agreement between the holding company BV and the subsidiary based in South Africa. Despite the agreement, it is clear that Uber SA is the contact point for all drivers and dealings with Uber BV are limited to those generated on the app. Engagements on operations and even queries regarding deactivation are done with Uber SA. I agree that the local subsidiary of an international company must be regarded as the employer to avoid severe disadvantage to South Africans working for foreign companies.[5]

59) My conclusion is that even though Uber BV provides the app and generates the contracts, Uber SA is, for all intents and purposes, Uber in South Africa. Uber SA directs operations in the country and the city in question. Insofar as Uber BV is the party that concludes contracts with drivers, it is anonymous and has no relevance for drivers.

---

[5] See *August Läpple (South Africa) v Jarret & Others* [2003] 12 BLLR 1194 (LC) at par 48.

Only signed awards that contain the CCMA approved watermark are authorised. |CaseNumber|
Page 12 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|

60) I have considered whether a finding that Uber drivers are employees is detrimental to economic development. The consequences for Uber of a finding that the drivers are employees for the purposes of the Labour Relations Act are not dire. If one equates deactivation with dismissal, Uber already has a policy setting out the reasons for deactivation, much like a company's disciplinary policy. It already monitors performance, gives warnings and suggestions for improvement even though this is apparently structured in a way so as to avoid the appearance of enforcing discipline. The right to challenge one's dismissal by referring a dispute to the CCMA may result in time spent defending itself at CCMA processes, but employers with far fewer resources manage this as part of the cost of doing business. Uber presents itself as fair and reasonable in its treatment of drivers and if this is so, there is no reason why fairness should not be tested.

61) Uber drivers are already organized into worker/driver groups such as The Guild and The Movement. And if finding them to be employees means that they are able to engage in collective bargaining and exercise the right to strike, these are rights enshrined for all workers in the Constitution, and if collective bargaining and the right to strike are considered a social good for workers in formal or traditional employment relationships, there is no reason why the same should not apply to Uber drivers who are workers in non-traditional employment relationships.

RULING

62) The CCMA has jurisdiction to determine the dismissal disputes referred by Uber drivers as they are employees of Uber SA for the purposes of the Labour Relations Act 66 of 1195 as amended.

Winnie Everett

SENIOR COMMISSIONER

Only signed awards that contain the CCMA approved watermark are authorised. |CaseNumber|
Page 13 of 13
Last saved on: |DocLastSavedDate|
Last saved by: |DocLastSavedUserName|