

**CONFLICT OF COMPETENCE NO. 164.544 - MG**

**(2019/0079952-0) RELATOR : MINISTER MOURA RIBEIRO**

ASSIGNEE: 1ST LABOR COURT OF POÇOS DE CALDAS - MGSUSCITADO :  
COURT OF LAW OF THE SPECIAL CIVIL COURT OF POÇOS  
DE CALDAS - MG

INTERESTS. DENIS ALEXANDRE BARBOSA INTERES.  
UBER DO BRASIL TECNOLOGIA LTDA

**REPORT**

**MR. MINISTER MOURA RIBEIRO (Rapporteur):**

between  
LAW OF  
BOARD  
CALDAS -  
and the  
SPECIAL  
POÇOS



This is a conflict of  
competence  
established  
the JUDGE OF  
THE 1ST  
WORKING  
OF POÇOS DE  
MG (SUSCITANT),  
JUDGE OF THE  
CIVIL JUDGE OF  
DE CALDAS - MG  
(SUSCITIZED).

The issue, in  
origin, involves an action for obligation to do c.c. compensation for material and moral  
damages filed by DENIS ALEXANDRE BARBOSA against the company UBER, a  
private law entity.

The plaintiff claimed that he performed races through the UBER  
application, but his account was suspended by the company, which prevented him from  
exercising his profession as a driver. He claimed that the company alleged irregular  
behavior and misuse of the application, which caused him material losses for having  
rented a vehicle to perform the races. He requested the reactivation of his UBER  
account and compensation for material and moral damages.

The action was initially brought before the State Court, which declined  
its jurisdiction because it understood that this was an employment relationship, and  
therefore the Labor Court had jurisdiction.

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Justice*

When the case was sent to the Labor Court, it also declared itself incompetent and raised the present conflict, under the allegation that the employment relationship was not characterized in this case.

The Subprocurator General of the Federal Republic opined for the declaration of competence of the State Court (e-STJ, pages 84/86).

This is the report.

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**SUMMARY**

**NEGATIVE CONFLICT OF COMPETENCE. INCIDENT FILED  
UNDER THE AEGIS OF THE NCPC. ACTION OF OBLIGATION TO**

**DO C.C.  
COMPENSATION  
FOR MATERIAL  
AND MORAL  
DAMAGES FILED  
BY DRIVER OF  
THE UBER  
APPLICATION.  
EMPLOYMENT  
RELATIONSHIP  
NOT**



**CHARACTERIZED. SHARING ECONOMY. CIVIL NATURE.  
COMPETENCE OF THE STATE COURT.**

1. Jurisdiction *ratione materiae*, as a rule, is a matter that precedes any judgment on other types of jurisdiction and, being determined according to the legal nature of the claim, arises directly from the request and cause of action brought to court.

2. The factual and legal grounds of the cause do not concern any employment relationship between the parties, nor do they convey the claim for receipt of labor-related sums. The claim arises from the contract signed with a company that owns a cell phone application, of an eminently civil nature.

3. The technological tools currently available have allowed the creation of a new type of economic interaction, giving rise to the *sharing* economy, in which the provision of services by owners of private vehicles is intermediated by applications managed by technology companies. In this process, the drivers, who perform the activity, act as individual entrepreneurs, with no employment relationship with the company that owns the platform.

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Justice*

4. It is up to the State Common Justice System to judge an action of obligation to do c.c. compensation for material and moral damages filed by an application driver seeking the reactivation of his UBER account so he can use the application again and perform his services.

5. Conflict known to declare the State Court competent.

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**VOTE**

**MR. MINISTER MOURA RIBEIRO (Rapporteur):**

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jurisdiction  
between  
different

revolves  
definition  
court to  
an action  
c.c.  
material  
damages  
application driver against the company UBER.

Based on article  
of the Federal  
Constitution, I have  
over an incident  
judges attached to  
courts.

The controversy  
around the  
of the competent  
process and judge  
of obligation to do  
compensation for  
and moral  
filed by an

Jurisdiction *ratione materiae*, as a rule, is a matter that precedes any judgment on other types of jurisdiction and, being determined according to the legal nature of the claim, arises directly from the request and cause of action brought to court.

In the case under review, the request made by the plaintiff in the initial petition is the reactivation of his UBER account so he can again use the application and perform its services. The cause of action is the digital intermediation contract for the provision of services signed between the parties.

The factual and legal grounds of the cause do not concern any employment relationship between the parties, nor do they convey the claim for receipt

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Justice*

of labor-related sums. The claim arises from the contract signed with a company that owns a cell phone application, of eminently civil nature.

The employment relationship requires the assumptions of personality, habituality, subordination and onerosity. In the absence of any of these assumptions, the work is characterized as autonomous or casual.

The UBER company operates in the market through a cell phone application responsible for bringing together the partner drivers and their clients, the passengers.

The app drivers have no hierarchical relationship with the

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Justice*

UBER company because their services are rendered on a casual basis, without pre-established schedules and do not receive a fixed salary, which de-characterizes the employment relationship between the parties.

Once the employment relationship is ruled out, the individual private transportation system, based on sharing network providers, has a civil nature.

The activity developed by app drivers was recognized with the edition of Law 13.640/2018, which amended Law 12.587/2012 (the National Urban Mobility Policy Law), to include item X in its 4th article:



*Art. 4 For the ends of this Law, it is considered X - individual private paid transportation of passengers: paid passenger transportation service, not open to the public, for individualized or shared trips requested exclusively by users previously registered on applications or other network communication*

*platforms.*

The law gave the activity a private character, in line with the concept adopted by the Organization for Economic Cooperation and Development (OECD) for the sharing of goods between people, through a computerized system, called "peer-to-peer platforms" or "peer platform markets", that is, a market between peers - P2P, as clarified by the doctrine on the subject:

*This new type of economic interaction should not be confused with the classic models involving one company and one consumer (B2C - business to consumer), two companies (B2B - business to business) or consumers (C2C - consumer to consumer). There is, in fact, a "two-sided market", since there are two interested parties, one of which is willing to allow the other to use a good that is in its domain, and the other agrees to use it for a fee. However, the entire transaction is mediated by an economic agent that controls the digital*

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*platform.*

(SILVA, Joseane Suzart Lopes da. **The individual remunerated transportation of passengers in Brazil through app: Law 13.640/2018 and the protection of consumers in the face of the sharing economy.** Revista de Direito do Consumidor, vol. 118, year 27, pp. 157/158)

*The OECD uses the term peer platform markets, analyzing only*



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*the segment that involves economic exchanges between individuals, peer to peer (P2P), "these business models make economic opportunities accessible to individuals who provide the goods or services ('peer providers') and to the platforms that make the connection ('peer platform')". For consumers (peer consumers), this market offers advantages such as lower costs, greater selectivity, convenience, social experiences, or even a more sustainable consumption proposal.*

(PAIXÃO, Marcelo Barros Falcão da. **The challenges of consumer law and regulation in the sharing economy.** Revista dos Tribunais. vol. 994. year 107. São Paulo: Ed. RT, August 2018, pp. 227/228).

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In short, in the case of a claim in which the cause of action and the request in the initial petition do not refer to the existence of an employment relationship between the parties, constituting a dispute arising from an eminently civil legal relationship, the jurisdiction of the State Court should be declared.

Under these conditions, **I CONFIRM** the conflict in order to declare competent the

**JUDGE OF LAW OF THE SPECIAL CIVIL COURT OF POÇOS DE CALDAS - MG.**

It is the vote.