

PROCESS NO. TST-ED-RR-1000123-89.2017.5.02.0038

A C O R D (5th Class) GMBM/CHS/jr

MOTION FOR CLARIFICATION. VICTIMS.

INEXISTENCE. Since the appellate decision challenged does not contain any of the flaws foreseen in arts. 897-A of the CLT and 1.022 of the the motion for clarification should be rejected. Rejection of motion for clarification, with application of a fine.

These are the case of Amendments of Statement in Review Appeal No. TST-ED-RR-1000123-89.2017.5.02.0038, in which the following are Appellants: MARCIO VIEIRA JACOB and the following are Appellants UBER DO BRASIL TECNOLOGIA LTDA. AND OTHERS.

This is a motion for clarification brought against the appellate decision of this Class, in which the party claims to have occurred the defects provided for in arts. 1022 of the CPC and 897-A of the CLT.

This is the report.

V O T O

1 - KNOWLEDGE

 $\hbox{ The assumptions of admissibility are fulfilled,} \\ \hbox{I am ${\bf aware of}$ the statement of objections.}$

2 - MERIT

The appellant files a motion for clarification against the judgment rendered by this Panel, claiming omissions in the judgment.

1 b v d 0



He affirms that "the Plaintiff's statement that 'he could go offline' does not rule out the hypothesis of legal subordination, since the mechanisms of control of working hours undertaken by the Defendant are effectively established.



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He alleges that the judgments pointed out in the appealed appellate decision are non-specific and that there was an omission in relation to the fact that the plaintiff does not have autonomy to determine the forms and amounts of service provision.

On examination.

The purpose of motion for clarification is to remedy intrinsic imperfections that may exist in the judgment, in cases of obscurity, contradiction or omission, and therefore cannot be used to reexamine the matter examined (article 897-A of the CLT and 1.022 of the CPC/2015).

In this case, none of these hypotheses has been configured.

In fact, the appealed decision adopted explicit grounds to rule out the employment relationship recognized by the TRT, as synthesized in the preamble:

APPEAL OF REVIEW. DECISION PUBLISHED DURING THE EFFECTIVENESS OF LAW 13.015/2014. EMPLOYMENT RELATIONSHIP. MOTORIST. UBER. ABSENCE OF SUBORDINATION. LEGAL TRANSCENDENCE RECOGNIZED. It is important to highlight

the reexamination of the case does not require the review of the facts and evidence in the records, since the transcription of the plaintiff's personal statement in the appealed appellate decision contemplates a factual element capable of recognizing the confession regarding the autonomy in the provision of services. In fact, the plaintiff expressly admits the possibility of staying "off line", without any time limitation, a circumstance that indicates the complete and voluntary absence of the rendering of the services under examination, which only occurs in a virtual environment. This fact reflects, in practice, the author's broad flexibility in determining his routine, his working hours, the places he wishes to work and the number of clients he intends to serve each day. Such self-determination is incompatible with the recognition of the employment relationship, which has as its basic assumption the subordination, an element on which the distinction with autonomous work is based. As if the plaintiff's confession



regarding the autonomy to perform his activities were not enough, it is an undisputed fact in the records that the plaintiff adhered to the digital intermediation services provided by the defendant, using an application that offers an interface

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between previously registered drivers and service users. Among the terms and conditions related to these services is the reservation to the driver of the equivalent of 75% to 80% of the amount paid by the user, as stated by the TRT. This percentage is higher than what this Court has been admitting as sufficient to characterize the partnership relationship between those involved, since the apportionment of the value of the service in high percentage to one of the parties shows a remuneration advantage not consistent with the employment relationship. Precedents. Review appeal known and provided.

It is clear, therefore, that there are no flaws to be corrected, and it should be pointed out that the measure presented does not serve to determine whether or not the decision appealed against is correct.

Therefore, I **reject** the motion for clarification and, due to the procrastinating intention, I apply a fine of 1% (one percent) on the amount of the cause (R\$ 66,000.00), in the amount of R\$ 660 (six hundred and sixty reais), in favor of the respondent, pursuant to article 1,026, paragraph 2, of the CPC.

THIS POST

The Justices of the Fifth Panel of the Superior Labor Court unanimously **rejected the motion** for clarification, and imposed a fine of 1% (one percent) on the amount of the cause (R\$66,000.00), in the amount of R\$660 (six hundred and sixty reais), in favor of the respondent, pursuant to article 1026, paragraph 2, of the CPC.

Brasilia, November 25, 2020.

Signed by digital signature (MP 2.200-2/2001)

BRENO MEDEIROS

Reporting Minister