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N° RG: F 16/11460

[Letterhead: Liberté – Égalité –
Fraternité
French Republic
Department of Justice]

**REGISTERED LETTER WITH
ACKNOWLEDGEMENT OF RECEIPT**

SAS UBER FRANCE
PARC DU PONT DE FLANDRE
11 RUE CAMBRAI
75019 PARIS

SECTION: Commerce Division 4

AFFAIR:
Florian MENARD
Vs.
SAS UBER FRANCE, UBER B V

NOTIFICATION of a JUDGEMENT
(Recorded delivery letter with acknowledgement of receipt)

I notify you of the authentic copy certified true of the judgement handed down on 29 January 2018 in the affair referred to above.

This decision is open to the following recourse: APPEAL within a period of one (1) month as from the date on which you sign the acknowledgement of receipt of this notification.

The appeal is lodged, investigated and judged following the procedure with compulsory representation. It is lodged before the social division of the Paris Court of Appeals (34 quai des Orfèvres-75001 Paris).

If you are not represented by a trade union counsel, you are required to brief a barrister. I urge you to consult the provisions on the overleaf of this letter.

Paris, 01 February 2018

Director of the court clerk's department
On behalf of the Court Clerk

[Signature]

[Stamp]

Mauricette NELLEC

Computation of deadlines for recourse by appeal, appeal before the Court of Cassation and opposition

Art. 528 of the Code of Civil Procedure: The deadline on expiry of which recourse can no longer be instituted runs as from notification of the judgement, unless the period of time has begun to run by virtue of the law, following the date of the judgement.

The period of time runs even against he who has served the notice.

Art. 642 of the Code of Civil Procedure: Deadlines expire on the last day at twelve o'clock midnight. Any deadline that expires on a Saturday, Sunday or on a bank holiday or public holiday is extended to the first business day thereafter.

Art. 643 of the Code of Civil Procedure: When a claim is brought before a jurisdiction that has its registered office in mainland France, the deadlines for appearance, appeal, opposition, judicial review and appeal before the Court of Cassation are increased as follows:

1) one (1) month for persons residing in Guadeloupe, Guiana, Martinique, La Réunion, Mayotte, Saint-Barthélemy, Saint-Martin, Saint-Pierre-et-Miquelon, French Polynesia, the Wallis and Futuna Isles, New Caledonia and the French Arctic and Antarctic territories;

2) two (2) months for those residing abroad.

Art. 668 of the Code of Civil Procedure: The date of notification by post, subject to article 647-1, is, with regard to he who proceeds therewith, that of the sending, and with regard to he on whom the notification is served, the date of receipt of the letter.

1 – APPEAL

Art. R. 1461-1 of the Labour Code: [...] The deadline for appeal is one (1) month. If they are not represented by the person mentioned in 2° of article R 1453-2 (trade union counsel), the parties are required to brief a barrister. The acts of this appeal procedure which are put under the responsibility of the lawyer are carried out lawfully by the person mentioned in 2° of article R 1453-2. Moreover, those intended for the lawyer are lawfully carried out with the above-mentioned person.

Art. R. 1461-2 of the Labour Code: the appeal is lodged before the social division of the Court of Appeal. It is lodged, investigated and tried following the procedure with the compulsory representation.

Appeal for a decision to stay proceedings

Art. 380 of the Code of Civil Procedure: A decision on a stay of proceedings can be appealed against on authorisation by the First President of the Court of Appeals if it is backed up by a serious and legitimate reason.

The party that wishes to appeal refers the matter to the First President, who deliberates in the form of emergency interim proceedings. The summons to appear must be served within one (1) month following the decision.

If he accedes to the application, the First President schedules the day on which the case will be heard in the court to which the matter has been referred, and he deliberates as in proceedings on a fixed day, as stated in article 948, according to the case.

Appeal for a decision ordering expert appraisal

Art. 272 of the Code of Civil Procedure: A decision ordering expert appraisal can be appealed against independently of the judgement on the basis of authorisation by the First President of the Court of Appeal if it is backed up by a serious and legitimate reason.

The party that wishes to lodge an appeal refers the matter to the First President who deliberates in the form of emergency interim proceedings. The summons to appear must be served within one (1) month following the decision.

If he accedes to the application, the First President schedules the day on which the case will be heard in the court to which the matter has been referred, and he deliberates as in proceedings on a fixed day, as stated in article 948, according to the case.

If the judgement ordering expert appraisal also includes a pronouncement on competence, the court can be referred to for contestation on competence even though the parties may not have filed a rejoinder.

2 – APPEAL BEFORE THE COURT OF CASSATION

Art. 612 of the Code of Civil Procedure: The deadline for appeal before the Court of Cassation is two (2) months, unless otherwise provided for.

Art. 613 of the Code of Civil Procedure: The deadline runs, with regard to decisions by default, as from the day that opposition is no longer admissible.

Art. 973 of the Code of Civil Procedure: The parties are required, unless otherwise provided for, to brief a barrister before the Counsel of State and the Court of Cassation. Doing so entails election of domicile.

Art. 974 of the Code of Civil Procedure: Appeal before the Court of Cassation is lodged by declaration to the Clerk's Office of the Court of Cassation.

Art. 975 of the Code of Civil Procedure: The declaration of appeal must contain the following under penalty of nullity:

1° For natural persons: last name, first and middle names, place of residence of the applicant for appeal;

For legal entities: their legal form, their corporate name, their registered office;

2° The last name, first and middle names of the counsel or, if a legal entity is involved, its corporate name and registered office;

3° Briefing the applicant's barrister before the Council of State and the Court of Cassation;

4° Information on the decision being contested.

The declaration specifies, where applicable, the grounds of the decision to which the appeal is limited. It is dated and signed by the barrister before the Counsel of State and the Court of Cassation.

3 – OPPOSITION

Art.490 of the Code of Civil Procedure: [...] An order handed down without appeal by default is open to opposition. The deadline for opposition fifteen (15) days.

Art. 571 of the Code of Civil Procedure: Opposition can result in withdrawing a judgement (order) handed down by default. It is open only to a defaulter.

Art. 572 of the Code of Civil Procedure: Opposition calls into question, before the same judge, the points judged by default so that it can be deliberated anew in fact and in law. A judgement struck by opposition is quashed only by a judgement that withdraws it.

Art. 573 of the Code of Civil Procedure: Opposition is lodged in the stipulated forms for court action before the jurisdiction that handed down the decision. [...]

Art. 574 of the Code of Civil Procedure: Opposition must contain the defaulting party's pleas.

Art. R. 1455-9 of the Labour Code: A petition to be heard in interim emergency proceedings is lodged by the applicant, a bailiff's writ or subject to the conditions stipulated in article R. 1452-1.

Art. R. 1452-1 of the Labour Code: The matter is referred to the Industrial Tribunal either by petition or through discretionary presentation by the parties [...].

Art. R.1452-2 of the Labour Code: The application is lodged with the Clerk's Office of the Industrial Tribunal. It can be sent by recorded delivery letter. In addition to the stipulations prescribed by article 58 of the Code of Civil Procedure, the application lists each of the points to be debated.

**CONSEIL DE PRUD'HOMMES
DE PARIS**
27 Rue Louis Blanc
75484 PARIS CEDEX 10
Tel: 01.40.38.52.00

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

J U D G E M E N T

After full argument on both sides, appealable

**SECTION
Commerce Division 4**

Pronounced through availability at the Clerk's Office on
29 January 2018 in the presence of Ms Chloé MASSE,
Court Clerk

Please at the hearing held on **20 November 2017**

General Role no. F 16/11460

NOTIFICATION recorded
delivery letter w. acknowl. of
receipt on:

Composition of the judgement bureau during the pleas and
consultation:

Ms Béatrice LIENARD, President Advisory Judge (S)
Mr Philippe PEREIRA DA SILVA, Assessor Advisory Judge (S)
Mr Michel PETITJEAN, Assessor Advisory Judge (E)
Ms Christine TRIADOU, Assessor Advisory Judge (E)
Assisted during the pleas by Ms Chloé MASSE, Court Clerk

Served on the
applicant on:

on the defendant on:

ENFORCEABLE COPY
served on:

on:

APPEAL no.

done by:

on:

par L.R.
au S.G.

BETWEEN

Mr Florian MENARD
born on 06 August 1993
Place of birth: ENGHIEU LES BAINS (95)
14 RUE CLAUDE MONET
95440 ECOUEN
Assisted by Maître Aurélie ARNAUD C0343 (Lawyer, member
of the Paris Bar)

APPLICANT

AND

SAS UBER FRANCE
PARC DU PONT DE FLANDRE
11 RUE CAMBRAI
75019 PARIS
Represented by Maître Cyril GAILLARD T12 (Lawyer, member
of the Paris Bar)

SOCIETE UBER B V
VIJZELSTRAAT 68 78 4TH FLOOR
1017 HL AMSTERDAM PAYS BAS
Represented by Maître Cyril GAILLARD T12 (Lawyer, member
of the Paris Bar)
Mr Jean-Baptiste CHAVIALLE (Senior employment Counsel)

DEFENDANTS

PROCEDURE

- Referral to the Industrial Tribunal on 23 November 2016.
- Summons of the defendant party by ordinary letter and recorded delivery letter received on 30 November 201 to the judgement hearing of 29 June 2017. On this date, the Industrial Tribunal decided to attempt conciliation.
- Hearing of 20 November 2017.
- The parties' counsels have filed submissions.

THE APPLICATION

- Declare itself competent rationae materiae
- Acknowledge the employer-employee relation existing, on the one hand, between the companies UBER FRANCE SAS and UBER BV and, on the other, rule that Mr MENARD was an employee of the companies
- Consequently, reclassify the service contract as an employment contract and hold that the UBER FRANCE SAS and UBER BV companies act as Mr MENARD's co-employers
- Confirm the serious violations committed by the UBER FRANCE SAS and UBER BV companies against Mr MENARD
- Hold that the decision to terminate Mr MENARD's contract on 16 August 2016 must entail the effects of an unwarranted termination of employment contract
- **Primarily**: order the UBER FRANCE SAS company and the UBER BV company in solidum and the UBER FRANCE SAS company to pay the following sums:

- Compensation for prior notice	€ ,284.42
- Paid holidays pertaining thereto	€ 228.44
- Compensation for paid holidays (55 days)	€ ,053.00
- Legal severance pay	€ 837.61
- Damages for unwarranted termination of employment contract	€13 ,705.32
- Damages for unlawful dismissal	€ ,284.42
- All-inclusive compensation for concealed work (L.8223-1CT)	€13 ,705.32
- Reimbursement of professional expenses	€38 ,088.67
- Article 700 of the Code of Civil Procedure	€ ,500.00

- Remittance of the employer's certificate intended for the Pôle Emploi [French employment centre], an employment certificate and pay slips in application of the judgement subject to a daily delay penalty of €50 per document
- The Industrial Tribunal is asked to reserve the option of liquidating the daily delay penalty
- Declare provisional enforcement in application of article 515 of the Code of Civil Procedure
- Costs

THE FACTS

Mr MENARD began an activity as a passenger vehicle driver by joining the LIBER group; as the UBER Company calls on services only from self-employed drivers, Mr MENARD proceeded with the required formalities by registering on the [French] trades directory;

PLEAS OF THE PARTIES

The Applicant

As with all passenger vehicle drivers wishing to work with UBER, he was required to accept in a dematerialised form and thus directly on the UBER platform a contract known as a “services contract” in English (a French translation being available simply for practical reasons) with the company governed by the laws of the Netherlands, LIBER BV;

Thus as from October 2014, the UBER BV company handled the financial part of the collaboration between UBER and Mr MENARD by collecting the receipts for the trips provided by the latter and paying him each week the share due to him while the UBER France Company handled daily management of this collaboration by sending Mr MENARD instructions to be observed, imposing rates on him and sanctioning him for the least incident while at the same time ordering him to submit reports on his activity;

While Mr MENARD effectively performed his duties as driver and was accountable for his responsibilities, the defendant companies, under the cover of officially calling on independent workers, knowingly circumvented the elementary rules with regard to the labour legislation (remuneration, working hours, rest time) and thus considered itself exempt from proceeding with the required declarations to the various organisations (URSSAF, retirement and social security funds), thus realising substantial savings on payroll taxes each month;

Given the sustained pace of work, Mr MENARD’s state of health declined, and he saw his employment contract terminated by letter on 16 August 2016 due to a multitude of serious violations by the defendant companies with regard to Mr MENARD; for this reason, he referred the matter to this Industrial Tribunal.

The Defendant

Mr MENARD is a self-employed worker registered on the [French] trades directory under number 804 652 354 RM 9 who operates a passenger vehicle with driver;

He holds a passenger vehicle driver card and is registered on the [French] passenger vehicle driver operators’ directory under number EVTC095140262;

Mr MENARD concluded a partnership contract with the UBER BV Company on 18 July 2014 and made 4,019 trips through the LIBER application from October 2014 through 2016;

On 16 July 2016, Mr MENARD sent a letter to LIBER France SAS through the LIBER application to complain about the conditions he was working in, claiming that he was in fact to be considered an UBER FRANCE SAS employee, and he pointed out that he took due cognisance of termination of his employment contract at the fault of UBER FRANCE SAS on the grounds that his state of health had deteriorated and that UBER FRANCE SAS failed to observe its obligation to protect the health of its employees;

In a letter dated 10 November 2016, UBER FRANCE SAS answered Mr MENARD that he was bound to UBER BV, not to LIBER FRANCE SAS, by contract and that in any event this was a commercial and not a salaried relation;

It is under these conditions that the case is being put before this Tribunal;

"That for a more detailed account and claims by the parties, the Tribunal refer to the submissions filed and signed by the Clerk's Office."

IN LAW

The Tribunal, after deliberating in application of the law, pronounced, the following judgement made available at the Clerk's Office on 29 January 2018:

On the competence of the Tribunal

Whereas the UBER Company argues the incompetence of the Tribunal in favour of the Commercial Court;

Whereas Mr MENARD took due cognisance of the termination of his employment contract at the fault of the UBER Company;

But whereas the cogency or lack thereof of a termination of contract comes solely under the competence of the Industrial Tribunal;

Consequently, the Tribunal declares itself competent to hear the case;

On the work relation between the parties

Whereas Mr MENARD took due cognisance of [NdT: termination of] his employment contract on 16 August 2016 on the grounds that he complained about his work conditions and was to be considered an UBER FRANCE SAS employee;

Whereas a services contract was submitted to the Tribunal;

In the case in point, Mr MENARD points out to the Tribunal that he had begun his activity on 1st October 2014 in the capacity of passenger vehicle driver and that he accepted in dematerialised form on the UBER platform a contract known as a "Services contract";

Whereas Mr MENARD claims that there existed an employee-employer relationship between him and the UBER Company;

In the case in point, the employee-employer relationship is defined in terms of a job performed under the authority of an employer holding the power to give orders and directives, to monitor performance of the work and to sanction the deficiencies of the employee;

However, it cannot be contested here that Mr MENARD did not receive instructions directly from the UBER Company, but through the mobile application;

Whereas it also cannot be contested that the UBER Company is in the business of intermediation and not that of a transportation service, as clearly stipulated in the services contract submitted to the Tribunal;

In the case in point, it acts as an intermediary putting the operators of passenger vehicles in contact with private individuals through the mobile application;

Whereas it cannot be contested here that Mr MENARD is registered on the passenger vehicle driver operators' directory under number EVTC095140262 and also that he is registered on the trades directory under number 804 652 354 RM 9;

Whereas it cannot be contested that Mr MENARD is in fact the owner of his vehicle and that he thus was at liberty to adopt the working hours that suited him;

In the case in point, it has been demonstrated that no control of working hours is carried out by the UBER Company on the passenger vehicle drivers and that these drivers are under no obligation of presence or duration of connection;

Whereas it has also been demonstrated that drivers are at liberty to accept or to refuse a trip and that they are at liberty to disconnect if they so wish;

In the case in point, Mr MENARD was also at liberty to work according to the hours and days that suited him, since it cannot be contested that these matters were not imposed on him;

Whereas, moreover, this total liberty of organisation enjoyed by Mr MENARD already sets up an obstacle to acknowledging an employment contract;

Whereas it is clearly stipulated in the services contract submitted to the Tribunal in paragraph 13 "Relations between the parties" point 13,1 that this contract is not an employment contract and does not create an employee-employer relationship (including in the area of labour law);

In the case in point, nothing in this contract stipulates a status of employee with the UBER Company but in particular uses the word "client" with the UBER Company;

Consequently, at sight of the exhibits and information submitted to the hearings, the Tribunal holds that the parties are bound by no employment contract and that this is in fact a commercial contract concluded between Mr MENARD and the UBER Company, and it dismisses all of Mr MENARD's claims.

On the expenses

The Tribunal charges all expenses to Mr MENARD

ON THESE GROUNDS

The Tribunal, ruling publicly, after hearing full argument by both sides in an appealable judgement:

Declares itself competent

Dismisses all of Mr MENARD Florian's claims

Orders the Applicant to pay costs

THE CLERK
in charge of making the judgement available
[signature]

THE PRESIDENT
[signature]

[stamp: CERTIFIED TRUE COPY
[illegible]] [signature]

