



A Look-In At The Halfway Point In The Critical GrubHub Trial

Insights

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As readers of this blog know, we are right in the midst of one of the most significant legal developments for the gig economy. For the first time, a judge is being asked to definitely decide at trial whether a typical on-demand worker is correctly classified as an independent contractor or whether he is actually an employee. The two-week trial started last week, the Tuesday after Labor Day, and apparently there have been some interesting developments in the proceedings so far.

First, a very quick background. The case involves a former GrubHub driver named Raef Lawson who attempted to bring a class action lawsuit against the on-demand food delivery service, but his class action was not certified. Instead, his case has proceeded as a claim for under \$600 in allegedly unreimbursed expenses – to which he would only be entitled if he is found to be an employee, not a contractor. If he does make it past the initial misclassification hurdle in the judge’s eyes, however, he will be able to present evidence that he was shorted employee benefits such as unemployment and insurance coverage. Moreover, his attorney has indicated it would open the door to thousands of similar drivers prevailing under California’s notorious Private Attorneys General Act (PAGA), and there is certainly the hope that such a ruling would start a snowball effect and lead to other rulings against gig economy companies.

How is the trial going? According to one report, Lawson “got dismantled” by GrubHub’s lawyers on cross-examination. It was reported that GrubHub’s attorneys got the plaintiff to admit that he lied on his applications to the company, got paid for shifts he barely worked, and took steps to avoid doing some deliveries. Some highlights include:

- One of the key factors in the on-demand economy that would seem to demonstrate contractor status is the ability to perform work for multiple competing companies – even at the same time. And GrubHub’s driver contract – which Lawson agreed to – explicitly says that drivers are authorized to be active on multiple platforms. However, Lawson testified that he was afraid of GrubHub managers finding out that he was doing work for competitors like Postmates and Caviar and took steps to avoid them finding out about his moonlighting, which would make it appear he was more of an employee than a contractor. When GrubHub attorneys pointed out that working for competing companies was expressly permitted in the contract he agreed to, he said he hadn’t read the contract closely when he signed it.
- Interestingly, although he said he didn’t read the contract all that closely, it was also reported that he admitted at trial to having sent an email to GrubHub opting out of the arbitration

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agreement included in the contract. Which is interesting, because that means he read the contract closely enough to know that there was an arbitration agreement, and also knew the procedure for opting out of it. When cross-examined about this fact, he said he “skimmed” parts of the contract but couldn’t testify about “which parts” he read.

- Another part of the contract seemed to conveniently escape Lawson’s attention. He signed that he understood he was creating an independent contractor relationship with GrubHub, and that if he ever felt the relationship was something *other* than a contractor model, he would notify GrubHub. But he admitted on cross-examination that he never contacted anyone at GrubHub to inform them that he believed he was an employee (even though he had already demonstrated he knew how to reach out to them), but instead became a plaintiff in a case against the company just 10 days later.
- GrubHub’s lawyers also pressed Lawson hard on whether he simply signed up to work for the delivery company just to sue them. He admitted that he first contacted his attorney – who happens to be the main plaintiffs’ attorney in massive class action cases against Uber and Lyft – months before he actually started working for GrubHub.

Lawson’s attorneys also presented two other tricks up their sleeve during their case-in-chief that they hoped would convince the judge of his status as an employee. Late last week, they called to the stand a woman named T.J. O’Shae, who briefly worked for GrubHub as a customer and driver care associate. Although the company’s attorneys objected to her appearance and argued they were “sandbagged” by her taking the stand, the judge let her testify. She provided evidence that the company monitored, controlled, and fired drivers based on performance, which could tip the scales toward showing that the drivers (like Lawson) were employees. On cross-examination, defense attorneys got O’Shae to admit that she only worked a handful of shifts before quitting (meaning she might not be the best person to describe the intricate details of the working relationship between company and driver), and that she didn’t consider herself a manager because she didn’t have any authority to tell the drivers what to do.

And early this week, to close their case, the attorneys called their own law firm’s paralegals to the stand to present complex evidence about the calculation of wage and reimbursement damages. The paralegals presented evidence from spreadsheets they created in an effort to show that the company miscalculated mileage for its drivers, arguing that GrubHub used “as-the-crow-flies” distances despite the fact that city streets present twists and turns that were not reflected in the company’s math. However, GrubHub challenged the calculations and grew frustrated that the paralegals could not explain their rationale behind their figures, as they said that the main attorney for Lawson provided them the specific directions for them to compute the calculations.

Yesterday, the defense began their turn at bat and started presenting evidence to demonstrate that Lawson – like all of its drivers – was an independent contractor. The company began to methodically present witnesses to offer evidence that the drivers fit into California’s model for contractor status, and the remainder of the trial should continue in this fashion.

The trial is slated to wrap up next week, and we'll present another update as things progress. There's no telling when the judge will issue a final ruling on the case, but we'll certainly update this blog once a decision comes down.

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