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The right to collective bargaining and the worker category in the UK

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The Independent Workers' Union of Great Britain (IWGB) submitted an application to the Central Arbitration Committee (CAC) in order to be recognized for collective bargaining in North London. In November 2017, the CAC's decision denied the "Roos" the right to negotiate their working conditions to the following extent: they are not *workers*. The reasoning developed by the CAC is somehow ambivalent.

Firstly, the CAC determined the status of the Deliveroo couriers in line with a well-established case-law. The CAC noted that Deliveroo is an archetypal example of platform-based work relations, a model which reinforces the tri-partite taxonomy of work relations. The intermediary category of *worker* have hitherto seemed to be fitted to the model of digital intermediation of work, since many UK judges have repeatedly proceeded to requalify platform gig-workers, from independent contractors to *workers*. However the CAC faced a substantial difficulty: the existence of a substitution clause in the couriers' contracts authorizing the latter to engage a substitute. "Both unnecessary and undesirable" according to the Union's Counsel, the clause was still akin to dismiss the personal nature of the engagement, thus preventing the couriers to be recognized as *workers* by the CAC.

Since they are not *workers*, Deliveroo couriers are excluded from the scope of industrial relations law, including the right to bargain collectively. However, great attention was given by the CAC to the collective dimension of the claim. Two questions were to be answered.

On the one hand, it was necessary to identify the contours of the bargaining unit proposed by the Union. To this end, the CAC had to use some of the criteria given by Schedule A1 the Trade Union Labour Relations (Consolidated) Act 1992 (TURLCA), such as the location of the workers, the characteristics of the workers or "the need for the unit to be compatible with effective management". The CAC considered the geographical division operated by the platform: the platform's algorithm establishes delivery zones, with proper pay structures, proper management, and within which couriers are assigned to perform their work. The CAC accepted that the proposed bargaining zone was appropriate. Making use of the "effective management" criterion was particularly relevant because it revealed that the tools provided by the statute were suited to the specificities of digitally-intermediated work.

On the other hand, the Union had to benefit from a sufficient support from the couriers. In line with paragraph 36(1) of the Schedule, the CAC had to determine whether members of the Union

constituted at least 10% of the couriers in the North London zone, and whether a majority of the couriers *would be likely to favour* recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. Significant difficulties had to be overcome, such as workers fragmentation or other organizational difficulties inherent to digitally intermediated work, as well as a consequent anti-Union strategy conducted by the platform. Yet, both of those claims found a positive outcome. This demonstrated a powerful "appetite and interest in collective bargaining" from the couriers.

Consequently, the CAC's decision is in a way paradoxical. Industrial relations law has proved to be fitted for gig workers, since both requirements of bargaining unit and Union support have been comfortably met. However, the *worker* category remained closed door, further, guarded by a substitution clause. In June 2018, the IWGB succeeded in being granted the right to a full judicial review in front of a High Court judge. Greater attention might be given to Article 11 of the European Convention on Human Rights according to Jason Moyer-Lee, IWGB's General Secretary.

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