Translation of the press release of the German Federal Labour Court of 1st of December 2020
The case was represented by Dr Ruediger Helm, Munich / CapeTown

Press release n° 43/20

Employee status of "crowdworkers

The actual execution of micro-jobs ("micro-jobs") by users of an online platform ("crowdworker") on the basis of a framework agreement concluded with its operator ("croudsourcer") may result in the legal relationship qualifying as an employment relationship.

The respondent controls, on behalf of its customers, the presentation of branded products in retail outlets and petrol stations. It has the control activities themselves carried out by crowdworkers. Their task consists in particular of taking photos of the presentation of goods and answering questions about the advertising of products. On the basis of a "basic agreement" and general terms and conditions, the defendant offers the "micro jobs" via an online platform. Via a personally set up account, each user of the online platform can accept orders related to specific sales outlets without being contractually obliged to do so. If the Crowdworker accepts an order, he has to complete it regularly within two hours according to detailed instructions of the Crowdsourcer. For completed orders, experience points will be credited to his user account. The system increases the level with the number of completed jobs and allows for the simultaneous acceptance of several jobs.

The plaintiff last carried out 2978 orders for the defendant over a period of eleven months before the defendant announced in February 2018 that it would not offer him any further orders in order to avoid future discrepancies. By his claim, he first sought a declaration that there is an employment relationship of indefinite duration between the parties. In the course of the lawsuit, the defendant terminated any existing employment relationship as a precautionary measure on 24 June 2019. Thereupon, the plaintiff extended his lawsuit, in which he also pursues claims for remuneration, to include an application for protection against dismissal. The lower instances dismissed the claim. They denied the existence of an employment relationship between the parties.

The plaintiff's appeal was partially successful. The Ninth Senate of the Federal Labour Court recognised that the plaintiff was in an employment relationship with the defendant at the time of the precautionary termination of 24 June 2019.

Pursuant to § 611a BGB, employee status depends on the employee performing externally determined work in personal dependency in accordance with instructions. If the actual performance of a contractual relationship shows that this is an employment relationship, the designation in the contract is irrelevant. The overall assessment of all circumstances required by law may show that crowdworkers are to be regarded as employees. An employment relationship is deemed to exist if the client controls the cooperation via the online platform operated by him in such a way that the contractor is not free to organise his activities in terms of place, time and content. This is the decisive case. The plaintiff performed work in a manner typical for employees, which was bound by instructions and determined by third parties in personal dependence. It is true that he was not contractually obliged to accept the defendant's offers. However, the organisational structure of the online platform operated by the defendant was designed to ensure that users registered and trained via an account continuously accepted bundles of simple, step-by-step, contractually specified micro-orders in order to complete them personally. Only a higher level in the evaluation system, which increases with the number of orders carried out, enables the users of the online platform to accept several orders at the same time in order to complete them on one route and thus in effect achieve a higher hourly wage. This incentive system induced the applicant to carry out continuous control activities in the district of his habitual residence.

Nevertheless, the Ninth Senate of the Bundesarbeitsgericht (Federal Labour Court) dismissed most of the plaintiff's appeal, since the dismissal declared as a precautionary measure effectively ended the parties' employment relationship. With regard to the remuneration claims asserted by the plaintiff, the legal dispute was referred back to the Regional Labour Court. The plaintiff is not entitled to demand payment of remuneration in accordance with his fees previously received as a supposedly freelance employee. If an allegedly freelance employment relationship subsequently turns out to be an employment relationship, it cannot generally be assumed that the remuneration agreed for the freelancer was also agreed in terms of amount for employment as an employee. The usual remuneration in the sense of the German Commercial Code (HGB) is owed. § 612, Subsection 2, BGB, the amount of which must be clarified by the Regional Labour Court.

Federal Labour Court, judgement of 1 December 2020 - 9 AZR 102/20 -
Previous instance: Regional Labour Court, Munich, judgment of 4 December 2019 - 8 Sa