

The Digital Resistance: Contesting the Power of Gig Economy Platforms through Collective Worker Action.

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1. Preliminary remarks. 2. Mobilizing gig workers for collective action and political campaigns. 3. Union-sponsored litigation to contest misclassification of gig workers. 4. Collective bargaining (and its proxies) for platform workers. 5. Conclusion and final remarks.

Abstract

This article examines how trade unions and self-organised worker groups have deployed digital organising tools to collectivise gig work, focusing on rideshare and food delivery platforms. It demonstrates the successful actions of worker representatives to improve the working conditions and legal position of platform-based rideshare and food delivery workers in several countries, through: coordinated mobilisation to disrupt the operations of platforms and build campaigns for increased regulation of platform work; strategic litigation to establish useful legal precedents, attract public attention and build solidarity among like-minded workers; and negotiating collective agreements on behalf of gig workers. While deficiencies are identified in the collective bargaining activities of some unions, the article concludes that unions and grass-roots worker groups have played a critical role in contesting the contracting model which lies at the core of gig worker exploitation – and helping them to martial the power obtained through resistance and collective action.

Keywords: Gig economy; Platform work; Contracting model; Self-employed; Misclassification; Worker mobilization; Digital organizing; Strategic litigation; Collective bargaining; Trade unions.

1. Preliminary remarks.

The growth of the gig or platform economy in many parts of the world over the last decade or more has presented many challenges for workers and those who represent them. This intervention considers how trade unions and self-organised worker groups have deployed digital organising tools to collectivise gig work, and begun to counter the gaps in

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employment regulation exposed by the contracting model adopted by many platforms. That model involves the imposition of independent contractor or self-employed status upon workers who perform labour via digital platforms, with no negotiation, leaving the workers outside the protection of labour law frameworks. However, many researchers and commentators have highlighted the deception inherent in what is really a misclassification business model:¹ in reality, many gig workers are subject to the extensive level of control that is typical of employment.² In my recent book, I described the platforms' audacity in bypassing the labour laws of many countries around the world – by selling (to investors, policy-makers, and workers) “a narrative of glamorised, freelance-style work”.³ They have “latched onto technology and innovation and the (supposed) attraction of flexibility and entrepreneurship to the putative self-employed worker, as ruses for exploitation”.⁴ This is what I called “the mirage of liberating work in the gig economy”.⁵ This article will not reconsider the widespread evidence of underpayment of gig workers, the pronounced safety risks they face, their exposure to customers' abuse, sexual harassment and many other forms of exploitation, nor the ability of platforms to arbitrarily terminate the services of their workers instantly through “deactivation”.⁶ Rather, as noted above, it will consider the collective dimensions of platform work and the digital resistance to this new form of exploitation mounted by unions and workers themselves.⁷ The discussion focuses on two particular forms of task-based gig work: services provided through rideshare and food delivery platforms.⁸

2. Mobilizing gig workers for collective action and political campaigns.

Unions like the Independent Workers Union of Great Britain (IWGB), and self-organized Italian worker groups such as Deliveroo Strike Raiders, Deliverance Milano and Riders Union Bologna,⁹ have been instrumental in mobilising food delivery platform workers to take direct action in protest against their precarity. A striking feature of this mobilisation has been the ability of worker representatives to turn the technology used by platforms like Deliveroo, Foodora and Uber Eats as instruments of surveillance, performance management

¹ National Employment Law Project, *Rights at Risk: Gig Companies' Campaign to Upend Employment as We Know It*, 25 March 2019, 2; International Lawyers Assisting Workers (ILAW) Network, *Taken for a Ride: Litigating the Digital Platform Model*, ILAW Issue Brief, March 2021, 12-13.

² See for example Aloisi A., De Stefano V., *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour*, Hart Publishing, Oxford, 2022, 94.

³ Forsyth A., *The Future of Unions and Worker Representation: The Digital Picket Line*, Hart Publishing, Oxford, 2022, 149.

⁴ *Ibidem.*, 149.

⁵ *Ibidem.*, 148.

⁶ See for example Mawhinney S., Reinhard J., Lefebvre M., *Tough Gig: Worker Perspectives on the Gig Economy*, The McKell Institute Queensland, April 2023.

⁷ See further Bessa I., Joyce S., Neumann D., Stuart M., Trappmann V. and Umney C., *A Global Analysis of Worker Protest in Digital Labour Platforms*, ILO Working Paper 70, Geneva, June 2022.

⁸ Although it should be noted that platforms continue to emerge in a range of economic sectors, such as the Australian market for the provision of in-home aged care and disability care: see for example Macdonald F., *Individualising Risk: Paid Care Work in the New Gig Economy*, Palgrave Macmillan, Singapore, 2021.

⁹ Cini L., Tassinari A., Maccarrone V., *With or Without U(nions): Understanding the Diversity of Gig Workers' Organizing Practices in Italy and the UK*, in *European Journal of Industrial Relations*, 28, 3, 2021.

and discipline through workers' smartphones, into an organising tool.¹⁰ Many of these worker collectives have evolved from simple Facebook and WhatsApp groups, where riders and drivers shared concerns about their working conditions. Typical of this was the protest movement against Deliveroo's alteration of rider payments in 2016, which IWGB helped transform into a long-running campaign to improve pay and conditions across food delivery platforms in the UK.¹¹ At Deliveroo, IWGB assisted workers to engage in snap "log-off" strikes in many British cities,¹² commencing with a protest at the company's London head office where the CEO insisted on individual discussions with employees, but: "For the first time ... [he was] face-to-face with organized couriers. ... The thousands of dots on the map, spread all over London, [were actually] ... real people with real power".¹³ In addition to this kind of mobilisation in the food delivery sector, unions and rideshare driver groups globally have coordinated mass protests and log-offs in recent years – using "digital picket lines" to gain support from other drivers, consumers and the wider community.¹⁴

Union mobilisation of rideshare and food delivery workers has also been focused on political campaigns seeking improved regulation to counter the effects of the contracting model of the platforms. Australia's Transport Workers Union (TWU) is an exemplar of this approach, through its #Rights4Riders campaign in conjunction with the Victorian Young Workers Centre.¹⁵ The TWU has lobbied state governments in Australia for changes to workplace safety regulation following a series of food delivery rider deaths since 2020.¹⁶ This led to a commitment from the new state government in New South Wales to ensure gig workers have access to workers' compensation, safety standards and other rights enjoyed by employees.¹⁷ Reform at the federal level is also imminent, in large part due to the TWU's persistent advocacy and shaping of legislation which is currently before the Australian Parliament. The *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* proposes a regulatory scheme that would enable "employee-like" workers engaged by digital labour platforms and their representatives to apply to the Fair Work Commission for:

- a minimum standards order setting terms and conditions for the engagement of workers relating to matters including payment, working time, insurance, consultation and representation (but not overtime rates, rostering, work health and safety or issues of a primarily commercial nature);

¹⁰ See for example Vandaele K., *Will Trade Unions Survive in the Platform Economy? Emerging Patterns of Platform Workers' Collective Voice and Representation in Europe*, European Trade Union Institute, Working Paper 2018.05, 15-16; Maffie D., *The Role of Digital Communities in Organizing Gig Workers*, in *Industrial Relations*, 59, 2021, 123; Hadwiger F., *Realizing the Opportunities of the Platform Economy through Freedom of Association and Collective Bargaining*, ILO Working Paper 80, Geneva, September 2022, 35-39.

¹¹ Cant C., *Riding for Deliveroo: Resistance in the New Gig Economy*, Polity Press, Cambridge, 2019, 107-121.

¹² See for example Shanks P., *Resisting exploitation and building power: the Deliveroo workers fighting back*, in *Bright Green*, 12 February 2019.

¹³ See Cant C., nt. (11), 9.

¹⁴ See for example Campbell A.F., *The worldwide Uber strike is a key test for the gig economy*, in *Vox*, 8 May 2019.

¹⁵ See Forsyth A., nt. (3), 152-153.

¹⁶ *Ibidem.*, 153-154; see also TWU, *Transport reform undeniably urgent as 13th food delivery rider killed: TWU*, 13 August 2023, available at: <https://www.twu.com.au/press/transport-reform-undeniably-urgent-as-13th-food-delivery-rider-killed-twu/>.

¹⁷ TWU, *Reform in the gig economy*, 12 October 2022, <https://twunsw.org.au/news/reform-in-the-gig-economy/>; Costin L., *NSW premier commits to "historic" gig worker equality*, in *Central Western Daily*, 16 May 2023.

- remedies to address the unfair deactivation of workers by a platform, including reactivation and compensation;
- the registration of collective agreements negotiated by consent between trade unions and digital labour platform operators.

The Australian Government has chosen an approach to regulating platform work which accepts the independent contractor status of workers (in most instances), but provides them with minimum rights and standards to address situations where workers have low bargaining power, low authority over their work or comparatively low pay.¹⁸ It is an innovative reform, which the TWU takes credit for in the following terms:

«The reform outlined today would give the Fair Work Commission the capacity to take a holistic view of gig work, how it is performed, and examine how much control or autonomy a gig worker really has, before setting appropriate standards to ensure they can work safely and are not exploited.

This is a ground-breaking system that would provide genuine flexibility for gig workers for the first time ever. The provision of rights like minimum pay, insurance and protection against unfair deactivation would ease the deadly pressure on transport gig workers to work longer, faster and at certain times of night just to make ends meet.

*This legislation was fought for by transport gig workers, and in memory of those that have been tragically lost. We urge Federal Parliament to urgently pass this reform to save lives on our roads».*¹⁹

3. Union-sponsored litigation to contest misclassification of gig workers.

Unions have led legal challenges to the platforms' contracting model, supporting or bringing cases before the courts in many countries aimed at overturning the denial of employment rights to gig workers.²⁰ In these cases, unions are not only seeking to establish helpful legal precedents. Rather, "strategic litigation" of this kind "places emphasis on the whole process of litigation: including publicity prior to, during and following, a legal case".²¹ In Australia, the TWU has mounted several cases under unfair dismissal legislation, challenging the arbitrary deactivation of rideshare and food delivery workers from apps operated by the platforms. This has included successful cases against Foodora²² and

¹⁸ Australian Parliament – The House of the Representatives, Speech of the Hon. Tony Burke MP - Minister for Employment and Workplace Relations, *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023: Second Reading Speech*, 4 September 2023.

¹⁹ TWU, *TWU applauds world-first legislation on gig worker rights*, 31 August 2023, available at: <https://www.twu.com.au/press/twu-applauds-world-first-legislation-on-gig-worker-rights/>.

²⁰ See International Lawyers Assisting Workers (ILAW), nt. (1); ILAW, *Taken for a Ride 2: Accelerating towards Justice*, ILAW Issue Brief, December 2022.

²¹ Adams Z., *Legal Mobilisations, Trade Unions and Radical Social Change: A Case Study of the IWGB*, in *Industrial Law Journal*, 52, 3, 2023. See also Kirk E., *The Worker and the Law Revisited: Conceptualizing Legal Participation, Mobilization and Consciousness at Work*, in *International Journal of Comparative Labour Law and Industrial Relations*, 38, 2022, 157.

²² *Kloger v Foodora Australia Pty Ltd* (2018) 283 IR 168.

Deliveroo,²³ although the latter decision was overturned on appeal;²⁴ and another case brought on behalf of a sacked Uber Eats driver, who obtained more than A\$400,000 in settlement of an appeal in the Federal Court of Australia against a lower tribunal ruling that she was not an employee.²⁵

IWGB played a role along with GMB Union and, ultimately, the App Drivers and Couriers Union in a successful test case which resulted in the UK Supreme Court determining that Uber drivers are “workers” for purposes of UK laws regulating the minimum wage and working time.²⁶ In this decision, the UK’s highest court affirmed the outcome reached at three lower levels of the judicial system, concluding that Uber effectively dictated the contractual terms entered into by its drivers; precluded real choice over when and where drivers work by monitoring their acceptance or rejection of drive requests; and engaged in “a classic form of subordination” through its algorithms including passenger rating systems.²⁷ IWGB has also prosecuted litigation seeking to establish the right to engage in collective bargaining with Deliveroo on behalf of food delivery riders.²⁸ Although unsuccessful to date,²⁹ IWGB’s pursuit of this case illustrates (as Adams explains) how the union views “rights-claiming, and legal challenges ... [not] as ends in themselves” but instead as avenues to fulfil broader objectives including:

*«... attempts to improve the bargaining position of the union and its members when it comes to campaigns for changes in public policy, and/ or employer behaviour; to establish precedents that can provide leverage when it comes to securing concessions from employers; and raising awareness, building solidarity between groups, and providing a common narrative through which to articulate the demands and suffering of a range of groups, in order to facilitate the formation of a common plan of action».*³⁰

²³ *Franco v Deliveroo Australia Pty Ltd* (2021) 305 IR 255.

²⁴ *Deliveroo Australia Pty Ltd v Franco* (2022) 317 IR 253. This different outcome arose from the appeal tribunal’s application of two High Court of Australia decisions which required (in the determination of whether a worker is an employee or an independent contractor) a focus on the rights and duties in any written contract entered into by the parties – rather than the reality of the work relationship: *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* (2022) 96 ALJR 89; *ZG Operations Australia Pty Ltd v Jamsek* (2022) 96 ALJR 144. See also Riley Munton J., *Employment Contracts in the Australian High Court*, in *Italian Labour Law e-Journal*, 15, 2022, 173; and *Nawaz v Rasier Pacific Pty Ltd T/A Uber B.V.* (2022) 317 IR 134.

²⁵ *Gupta v Portier Pacific Pty Ltd; Uber Australia Pty Ltd T/A Uber Eats* (2020) 296 IR 246; Marin-Guzman D., *Uber paid “incredible” amount to avoid landmark judgment*, in *Australian Financial Review*, 10 June 2021.

²⁶ *Uber BV and others (Appellants) v Aslan and others (Respondents)* (2021) UKSC 5.

²⁷ *Ibidem*.

²⁸ See Bertolini A., Dukes R., *Trade Unions and Platform Workers in the UK: Worker Representation in the Shadow of the Law*, in *Industrial Law Journal*, 50, 4, 2021, 662 and 679.

²⁹ The UK Court of Appeal ruled that the riders are not “workers” for purposes of UK collective bargaining law, in part because they are able to substitute other riders to perform deliveries: *The Independent Workers Union of Great Britain v The Central Arbitration Committee and Rooffoods Limited T/A Deliveroo* (2021) EWCA Civ 952. That decision has been appealed by IWGB: Webber A., *Supreme Court hears Deliveroo collective bargaining case*, in *Personnel Today*, 25 April 2023.

³⁰ See Adams, nt. (21), 21.

4. Collective bargaining (and its proxies) for platform workers.

In many countries, unions and other worker representatives face the dual constraints on collective bargaining for gig workers imposed by labour and competition (or antitrust) laws: labour law generally restricts access to collective bargaining to employees (or an intermediate category of workers in jurisdictions like the UK), while the self-employed are treated as independent businesses which are precluded from bargaining together by competition law.³¹ In several European nations, unions have successfully negotiated collective agreements for platform workers designated as employees.³² As for the vast majority of gig workers putatively engaged as independent contractors,³³ the TWU has bypassed Australian competition law restrictions by engaging in informal collective bargaining with platforms including DoorDash, Uber/Uber Eats and Menulog. These unregistered agreements generally set out the parties' commitment to high-level principles including appropriate work rights and entitlements for the flexible nature of this form of work, while also recognising the legitimate representative role of the union.³⁴ In the UK, GMB Union reached a recognition agreement with Deliveroo in May 2022, under which (according to GMB) riders would "be covered by a collective agreement that gives them a voice, including pay talks, guaranteed earnings, and representation in times of difficulty".³⁵ However the GMB-Deliveroo deal raised concerns not only for preserving the self-employed status of the platform's food delivery workers – but also for locking out a rival union, IWGB,³⁶ which had pursued long-running litigation trying to establish statutory recognition rights for collective bargaining with Deliveroo.³⁷

Even stronger unease was expressed by mainstream unions in Italy about the agreement made in September 2020 by the right-wing *Unione Generale del Lavoro* (UGL) and *Assodelivery* (a lobbying organization representing Uber Eats, Deliveroo, Glovo and Just Eat). Although giving delivery riders some minimum rights regarding pay, safety, insurance and training, the agreement preserved the workers' self-employed status and the piece rate basis of their remuneration while also circumventing a 2019 law which would have provided them with more favourable minimum standards.³⁸ One of the major trade union

³¹ See for example Aloisi A., De Stefano V., nt. (2), 155-156; Hadwiger F., nt. (10), 64; Kocher E., *Digital Work Platforms at the Interface of Labour Law: Regulating Market Organisers*, Hart Publishing, Oxford, 2022, 210-216.

³² Hadwiger F., nt. (10), 52-54. See also Lamannis M., *Collective Bargaining in the Platform Economy: A Mapping Exercise of Existing Initiatives*, Report 2023.02, European Trade Union Institute, Brussels, 2023.

³³ See Lamannis M., nt. (32).

³⁴ DoorDash, Transport Workers' Union of Australia, *Statement of Principles to Ensure Safety and Fairness for Workers in the On-Demand Economy*, 9 May 2022; Uber, Transport Workers' Union of Australia, *Statement of Principles and Future Commitments for Workers in the On-Demand Economy*, 28 June 2022; Menulog, Transport Workers' Union of Australia, *Charter of Principles and Ongoing Commitments to Ensure Safety and Fairness for On-Demand Delivery Couriers*, 27 March 2023.

³⁵ Jones A., *Union bails "historic" recognition deal with food delivery giant Deliveroo*, in *The Independent*, 12 May 2022.

³⁶ McGurdy C., *Deliveroo-GMB deal: a closer look*, in *The Social Review*, 7 August 2022, available at <https://www.thesocialreview.co.uk/2022/08/07/deliveroo-gmb-deal-a-closer-look/>.

³⁷ As discussed in section 3 of this article.

³⁸ Eurofound, *Collective agreement between AssoDelivery and UGL*, 23 July 2021, available at <https://apps.eurofound.europa.eu/platformeconomydb/collective-agreement-between-assodelivery-and-ugl-103352>.

confederations, Confederazione Generale Italiana di Lavoro (CGIL), successfully challenged Deliveroo's application of the UGL-Assodelivery agreement to its riders. In this case, the Bologna Labour Court ruled that Deliveroo's actions constituted anti-union behaviour in breach of Article 28 of the *Italian Workers' Statute* 1970; and that the agreement itself was invalid as it was not negotiated with the most representative workers' organization.³⁹ The agreement was also struck down by the Labour Court of Florence in another proceeding initiated by CGIL, on the grounds that UGL had conducted the negotiations with Assodelivery secretly, without informing the riders whose work would be subject to the agreement and while the major union confederations were attempting to negotiate a national collective agreement for the sector.⁴⁰

5. Conclusion and final remarks.

Trade unions and self-organised worker groups face formidable barriers in their efforts to collectivise gig work, including the disparate and atomised nature of the work (and workers) and the very real threat of retribution against union activists.⁴¹ Most platforms are openly hostile to trade unions⁴² and oppose unionisation drives almost as aggressively as they campaign against any attempt to regulate gig work.⁴³ Yet despite these obstacles, this article has shown that worker representatives have been able to successfully intervene to improve the working conditions and legal position of platform-based rideshare and food delivery workers in several countries. This has been achieved through three inter-connected approaches: coordinated mobilisation aimed at directly disrupting the operations of platforms and building campaigns for increased regulation of platform work; strategic litigation to establish useful legal precedents, attract public attention and build solidarity among like-minded workers; and negotiating collective agreements on behalf of gig workers. The article identified deficiencies in the approach of some trade unions in this last area. There is no doubting the importance of platform workers, and others who are self-employed yet perform predominantly personal work, having the same access to the benefits of collective bargaining as employees.⁴⁴ However, the examples considered in section 4 of the article

³⁹ Court of Bologna, 30 June 2021; European Trade Union Confederation (ETUC), *Italian court rules in favour of digital platform workers*, 26 October 2023, available at <https://etuclex.etuc.org/italian-court-rules-favour-digital-platform-workers>.

⁴⁰ Labour Tribunal of Florence, ruling No. 781/2021. On an earlier contrary ruling by the Labour Tribunal of Florence, see Recchia G., *Not So Easy, Riders: The Struggle for the Collective Protection of Gig-Economy Workers*, in *Italian Labour Law e-Journal*, 14, 1, 2021, 195.

⁴¹ See Aloisi A., De Stefano V., nt. (2), 157; Cini L., Tassinari A., Maccarrone V., nt. (9), 204-205.

⁴² Prassl J., *Collective Voice in the Platform Economy: Challenges, Opportunities, Solutions*, Report to the European Trade Union Confederation, Brussels, September 2018, 14.

⁴³ See for example Marin-Guzman D., *Uber warns Labor of "catastrophic" job losses from gig economy reforms*, in *Australian Financial Review*, 1 June 2023; Beazley J., *Uber warning that food delivery prices could spike 85% shows gig workers are underpaid, experts say*, in *The Guardian*, 17 October 2023, referring to the current proposals to regulate gig work in Australia (discussed in section 2 of this article).

⁴⁴ See for example Countouris M., De Stefano V., *The Labour Law Framework: Self-Employed and Their Right to Bargain Collectively*, in Waas B., Hiebl C. (eds), *Collective Bargaining for Self-Employed Workers in Europe: Approaches to Reconcile Competition Law and Labour Rights*, Wolters Kluwer, Alphen aan den Rijn, 2021, 3; Razzolini O., *Self-*

illustrate the imperative of trade unions effectively representing the interests of gig workers rather than prioritising organisational goals such as recruitment of new members. As I put it in my book, unions should never be complicit in “union-busting” and: “in negotiat[ing] collective agreements on behalf of gig workers ... unions must ensure their primary objective is the betterment of the workers they represent, rather than simply ousting another union at the behest of a platform”.⁴⁵ In summary, it can be concluded that unions and grass-roots worker groups have played a critical role in contesting the contracting model which lies at the core of gig worker exploitation, overcoming this displacement of employment protections for many workers – and giving them, for the first time, a sense of the power that can be realised through resistance and collective action.⁴⁶

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⁴⁵ See Cini L., Tassinari A., Maccarrone V., nt. (9), 205.

⁴⁶ See further Maffie D., Gough M., *Bargaining Against the Machine: A Theory of Bargaining Power in the Gig Economy*, in *Advances in Industrial and Labor Relations*, 27, 2023, 83; Schmalz S., Basauldo V., Serrano M., Vandaele K., Webster E., *Varieties of Platform Unionism: A View from the Global South on Workers’ Power in the Digital Economy*, in *Work in the Global Economy*, 2023.

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