

## **THE SOLIDARITY CENTER PODCAST**

**My Boss Is A Robot: A Special Series on App-Based**

**Host: Shawna Bader-Blau, Solidarity Center Executive Director**

**Guests: Olumide Babalola, attorney; Mery Laura Perdomo, labor attorney; Arianna Jiménez, journalist, scholar**

### **App Workers Seek Level Playing Field**

#### **Shawna Bader-Blau:**

Get paid to drive whenever you want. Make reliable money working anytime, anywhere. Be your own boss. These are just a few phrases that app companies use to entice workers to sign up. They're selling a version of "freedom" to workers who might not have other options to make a living. And freedom's great. We all like freedom. Make your own hours. Answer to no one. Be your own boss. App companies are eager to say these workers are independent contractors, but are they truly independent when they have no means to negotiate their wage and have zero say in business matters? Maybe the "freedom" of platform work is just an illusion.

My Boss Is a Robot, a podcast aimed to shine a light on the behind the scenes practices of app companies who exploit workers in our gig economy. We push for decent wages, fight for fair hours, and call out employer abuse whenever we see it, from unfair dismissals to unlawful union busting. I'm Shawna Bader-Blau. I'm the executive director of the Solidarity Center.

On today's show, what do we call this new crop of workers who get jobs from apps like Uber, DoorDash, and the like? The tech companies push their own definitions and for a reason, but what are these workers really?

Everybody probably has a friend or knows of someone who has worked for an app.

#### **Olumide Babalola:**

In 2016, an engineer friend of mine used to do Uber for leisure.

#### **Shawna Bader-Blau:**

That's Olumide Babalola, a lawyer currently based in the UK who works on digital and consumer rights issues.

#### **Olumide Babalola:**

He would put his car on the road and then connect to the Uber app and pick up passengers. And he found it very interesting, and he was also making money off the app until I think sometime about 2016 or 2017 when Uber started giving them some conditions with respect to the commission, with respect to how much they could charge the riders or the users of the app, with respect to remittance. He found it so uncomfortable.

#### **Shawna Bader-Blau:**

Getting a gig by downloading an app sounds great and easy. It's certainly a new global phenomenon, however, the usual practice if someone's offered a job or accepts a job, the conditions of that job are clear. The supervisor or boss indicates the specific amount of money the worker will make within an expected timeframe. So when Uber suddenly decided to change the terms of payment on a whim, the natural reaction for Olumide's friend is to react uncomfortably. So the lawyer started asking questions.

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#### **Olumide Babalola:**

So I got thinking, what is the state of the law or even the state of the contract of the parties with respect to the status of the parties? I mean, what is the understanding of the parties with respect to their relationship, with respect to liability, with respect to the lifespan, termination, benefits?

#### **Shawna Bader-Blau:**

Listen, without drivers, platform apps are worthless. They're quite literally the driving force that makes the technology function. So you would think a driver should have an equal say in negotiating a worker agreement, right? Yet somehow the apps exert all the control, and the workers are left with all the risk.

#### **Olumide Babalola:**

Users were left in the cold in terms of liability. Drivers were left in the cold in terms of welfare packages, in terms of knowing where they even stand with respect to the labor and employment laws in respective jurisdictions. What exactly is the relationship between drivers and the users? What exactly is the relationship between the users and Uber and the platform? So many questions were thrown open all over the place.

#### **Shawna Bader-Blau:**

We'll try to answer some of those questions next. Tech companies throw out all kinds of words to describe platform workers. They're freelancers. That always sounds fun. They're free. Or they're independent contractors with an emphasis on independent. Sounds empowering, right? The labor activist Ariana Jiménez has heard all kinds of definitions given to these workers by app companies. They're collaborators, small business owners, even entrepreneurs.

#### **Ariana Jiménez:**

When you think of running a small business, you think of building clients. You think of building a brand for yourself. You think of building market share. None of those opportunities are available to you as an individual driver. You get the orders you get, and you make the money you make.

#### **Shawna Bader-Blau:**

Let's pause for a moment and imagine the role of a real independent contractor. Let's say someone who builds custom furniture. A contractor can run all the numbers, the operational cost for labor and materials for example. If the price of an exotic wood fluctuates or if the wood worker must drive a long distance for installment, they can bill that cost directly to the client. A contractor has the prerogative to price the budget of a job, accept or decline, or leave room for negotiation. But drivers of these platform apps, on the other hand, don't have this luxury. Far from it.

Now, imagine you are an app driver in a country where there is hyperinflation, which as we know is unfortunately becoming all too common these days all over the world. Gas prices go up rapidly every day, yet drivers don't have any say about the service rates they charge, and they're still responsible for putting fuel in the tank. These drivers are not independent contractors.

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**Ariana Jiménez:**

It really, it's like a marketing ploy as much as anything, I think, for the public and for the government. And it's a way for the government and for capital and for foreign capital in particular, to act as if this was a golden opportunity for everyone involved when in fact it's a golden opportunity for a very small fraction of people.

**Shawna Bader-Blau:**

Mery Laura Perdomo is a labor lawyer based in Columbia.

**Mery Laura Perdomo:**

So sometimes they even buy the discourse sold by these apps.

**Shawna Bader-Blau:**

The "they" she speaks of, she's referring to the drivers who she says are often misled by the false definition of these gig workers and dubious marketing campaigns. Through a translator, she makes clear these app companies aggressively paint the picture that these workers are not their employees.

**Mery Laura Perdomo:**

These apps tell them, "You are a freelancer. You have your freedom. You can turn down work when you don't want to. You can keep your freedom and do whatever you want." And sometimes they buy this and they see themselves as freelancers, they identify as something else. And they want to keep their freedom, but in reality, what they are is weaker, they're more vulnerable, and they're more at risk than any other workers.

**Shawna Bader-Blau:**

Again, let's pause for a moment. These workers don't receive any of the benefits that normally come with working for a typical employer. Instead, platform apps have almost swindled our public's conscious about how to think about gig workers, that the individual must incur all of the risk of doing the job. Whose car is it? Whose smartphone is it? Who is the one paying the data charges?

**Mery Laura Perdomo:**

So it's been very hard to make them understand that they are just a worker like everybody else and that they deserve protection, and they don't even have the benefits for which the classic working class fought for very long ago.

**Shawna Bader-Blau:**

Look, for actually most of human history, there has not been anything called worker rights. Actually, it really wasn't until we got rid of slavery and feudalism and colonialism, built democracies. And frankly, until we had labor movements that people in the world started getting some basic rights like the right to living or decent or minimum wages, like the right to not work in conditions of forced labor, the end of child labor. The right to go to work without risking your life, without any kind of compensation and without any safety protections. These are all hard-fought victories of labor movements all over the

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world. And the reality is, as soon as workers in any one of our countries, the United States, Nigeria, Columbia, and beyond makes these gains, we immediately see rollbacks and redefinition of types of employees that don't qualify for these rights. So for example, all over the world, listen to this list of the typical kind of worker that is not included in these basic fundamental laws that protect their rights.

We're talking about all domestic workers. Almost all agriculture around the world is unprotected by these basic fundamental labor standards. Fair labor standards mostly don't apply to temporary workers, to contract workers. People who work in markets all over the world very often are not receiving these fundamental rights and the right to form a union, to fight back, to create better wages and working conditions, don't apply to any of these categories of workers in most countries.

And so the reality is employers and governments work hard to undermine every new category of worker that wins a new standard, a right to have a union, a right to have minimum wages, to roll it back. Why? For money and profits for employers and for political power for governments, because the reality is governments fear workers coming together to fight for decency and dignity at work, and employers fear the hit on their profits it'll take.

Okay, sorry, I just had to get that off my chest. Now, back to our story. Labor rights activist Ariana Jiménez says drivers in Columbia are wising up to these tactics.

#### **Ariana Jiménez:**

They are not fooled. There was not a single worker that I talked to that was under some illusion that they were small business owners and that this was an opportunity to advance.

#### **Shawna Bader-Blau:**

But as Mery Laura Perdomo notes, big tech companies are winning this vast misinformation campaign. It's always shocking to me to hear people I talk to think these jobs are so great.

#### **Mery Laura Perdomo:**

Whether these workers are seen as independent contractors or as subordinates, just in Latin America, we see millions of workers who are exploited, who are working injured, who don't even have a minimum salary guaranteed, who are risking their life every day with no guarantees whatsoever because the company can terminate them if they deem that they're not meeting certain standards. So the companies are getting rich and richer by denying them a freedom of association, denying them all kinds of health care and protection and denying them the right to collective bargaining as well. They have no contract. They have no recognition from the states. They have no social security whatsoever. So these workers are working in extremely precarious conditions.

#### **Shawna Bader-Blau:**

Extremely precarious. How about life-threatening? As we'll hear in more stories of My Boss Is a Robot, car accidents are common. Or worse, violence. Aimed directly at the drivers. And there is no one there to protect them.

Although things sound a bit bleak out there, the Solidarity Center sees hope. Despite platform work being relatively new, workers all over the world are getting savvy about how it works and who's actually

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benefiting. They see through the false claims of freedom hidden beneath a disguise of worker flexibility. They don't believe they can make an honest living with these apps. Again, Ariana Jiménez.

#### **Ariana Jiménez:**

These workers started getting organized either in unions or in other kinds of associations. They started bringing their cases and their voices to court, and they started winning some cases.

#### **Shawna Bader-Blau:**

Yay. Companies are losing the fight to define these workers as contractors, and we're happy about it.

#### **Ariana Jiménez:**

When corporations saw that these kinds of organizations and unions were starting to be successful, they started fighting back. How? By lobbying for laws that would leave these workers out by reclassifying them saying that they were partners, not workers, that they were working in a collaborative regime instead of just being what they are, which is workers, and basically seeking all ways to close the door of justice to them.

#### **Shawna Bader-Blau:**

Oh man, did you see what they did just right there? That's what I was talking about before, the gall, the trickery. Partners, really? What is this, a law firm? Just meaningless words. I mean, come on. As soon as I get the same billion dollars that Elon Musk gets, call me a partner. The day I get a \$2 billion package for quitting my job and failing a company like so many CEOs get when they run their companies into the ground, call me a partner. But until then, I'm not your partner. I work here and your work, the work that we do has benefit for your company, and I should be treated with dignity and respect and paid accordingly.

Okay, thank you for my little rant. The good news is there are some important cases paving the way forward. In 2019, a Uruguayan court ruled to apply an International Labor Organization standard to Uber. It says that drivers are in an employment relationship with the company. So you can throw partners out the door. It means drivers are employees, not freelancers and not contractors. However, Mery says other courts are ruling in the opposite direction. They are favoring the big tech companies instead. She gives us some splits.

#### **Mery Laura Perdomo:**

The trends are as follows: In 55 percent of legal rulings, the judges found that the relationship between the company and the person was definitely a subordination.

#### **Shawna Bader-Blau:**

Subordination, meaning these drivers have an authority ruling over them.

#### **Mery Laura Perdomo:**

So the person was a worker.

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#### **Shawna Bader-Blau:**

And on the other hand.

#### **Mery Laura Perdomo:**

30 percent of those legal rulings determined that there was no legal contract because they estimated that the worker was using his own bike or his own car or was determining his own schedule or using different apps, and therefore his relationship with the company was not one of subordination. In other words, that the worker was just collaborating or working as a freelancer.

#### **Shawna Bader-Blau:**

Okay, now let's examine a confusing case in Brazil. In 2017, a law was passed to protect these workers. It ensured a minimum wage and gave workers some benefits like social security and severance. But then, in 2020, a court ruled that because of Uber driver's flexible work schedule, they should not be classified as employees. And Italy did the same. A labor tribunal ruled that food delivery drivers' flexible schedules meant they were not employees.

#### **Olumide Babalola:**

In Europe, we have divergent decisions of the courts and tribunals on whether they are workers or whether they're employees or independent contractors.

#### **Shawna Bader-Blau:**

Again, that's Olumide Babalola, the Nigerian lawyer we heard earlier. He says app companies thrive in a place of uncertainty. They like the ambiguity, what he calls the gray area of the law.

#### **Olumide Babalola:**

All over the world, we keep having divergent decisions on whether platforms are employers or whether they have an agency relationship with the drivers. Their obligations as employers will be evaded in the absence of decisions because their responsibility or their obligations as employers will be evaded in the absence of decisions.

#### **Shawna Bader-Blau:**

What he means is without clearly defined laws, employers will find loopholes. And app companies love it, all the indecision, and they are spending millions lobbying governments to keep it that way, or better, rule in their favor. When they lose, which they often do, companies like DoorDash and Deliveroo, Uber and Grab, Postmates and Lyft pay huge fines and settlements. They pay them to drivers who are legally defined as their employees, but these companies cannot resist fighting against this definition. They continue to appeal, and they have endless cash to pay lawyers and lobby government officials. They continue to muck up any court decision, and they have no intention of backing down and ever defining their workers as anything other than contractors. So on its surface, these huge payouts going to drivers may seem like a victory, but the reality, it's just a drop in the bucket, the cost of doing business for the app companies.

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#### **Olumide Babalola:**

The only thing that can stop or that can settle this is legislation. On these special categories of employment relationship, there has to be a dedicated legislation. There has to be, and that's where the solution lies for this uncertainty.

#### **Shawna Bader-Blau:**

And that's what we're all about at the Solidarity Center. Look, any, quote, unquote, "new form of employment" that comes along, we know from the jump that employers and governments are going to try to make sure that type of job does not qualify for rights and protections of laws. And so our job is to fight to form the opposite. Labor movements around the world are fighting to make sure that every form of employment is covered by the right to organize. That means the power of coming together to fight back to shape your wages and working conditions and improve standards at work. The right to be covered by formal laws that the government applies to other categories of workers, like safety provisions, right to minimum wages, an end to child and forced labor and more. This is about dignity. It's about respect. Getting up, going to work, providing for your family. We need firm standard legislation around the world that defines these workers as workers and guarantees their rights. It's just that simple.

In the end, app companies could really care less about what to call these workers though. These companies, they think workers should just shut up and be happy they're working at all.

Next time on My Boss Is a Robot, it's the attack of the algorithms—how programmed robots can put platform workers at risk and literally cost them their lives. Thank you for listening. I'm Shawna Bader-Blau.