

Fair Fight

When an operator told its owner-drivers to upgrade to B-doubles, the resulting disagreement on fair compensation went right to the top. David Lalic writes in Owner Driver -

THE FEDERAL Magistrates Court has found, under the Independent Contractors Act, that a change in contracts terms can be challenged on grounds of unfairness.

On May 5, 2009 the Federal Magistrates Court handed down its third decision in *Keldote Pty Limited & Ors v Riteway Transport Pty Limited (2009) FMCA 319*.

Keldote Pty Limited & Ors were owner-drivers who had a longstanding contractual relationship with Riteway Transport Pty Limited ("Riteway Transport"). The owner-drivers provided transport services to Riteway Transport and in return Riteway Transport provided the owner-drivers with regular work, regular start and finish times, payment for each run, fuel subsidies and accommodation.

In or about 2007, Riteway informed the owner-drivers they were required to upgrade their vehicles from single trailers to B-doubles and that, in exchange, they would be paid an extra \$218 per run. Riteway Transport informed the owner-drivers that if they were unwilling or unable to make this upgrade, they would no longer be required to provide transport services.

The owner-drivers considered the proposal and decided that any upgrade would cost them at least \$300 per run. They then attempted to negotiate the terms of the upgrade with Riteway Transport on this basis. These negotiations were unsuccessful. The owner-drivers then brought proceedings in the Federal Magistrates Court pursuant to the independent Contractors Act.

In the Federal Magistrates Court proceedings, the owner-drivers alleged their contracts with Riteway Transport were unfair for, inter alia, the following reasons:

- The parties had unequal bargaining power
- The contracts did not contain a clause providing for independent mediation or arbitration
- The contracts enabled Riteway Transport to demand the applicants purchase equipment without adequate consideration
- The contracts were never secured in writing

The owner-drivers were successful in convincing the Court that it was unfair for Riteway Transport to demand they purchase new equipment without adequate consideration. The Court then turned its mind to the question of relief.

It was on this question of relief that further argument before the Court was made.

In his first decision, Federal Magistrate Cameron decided to rewrite the relevant clause in the contract by stipulating that the word "vehicle" in the relevant clauses be accompanied by the words "having specifications reasonably equivalent to the vehicle to be replaced". Riteway Transport argued that it had been denied natural justice because it was not given an opportunity to make representations to the Court in relation to the fairness or practicability of the order.

Consequently Cameron FM rescinded the earlier order and relisted the matter for parties to make representations on the appropriate relief to be ordered by the Court.

In his third decision, Cameron FM accepted Riteway Transport's representations and ordered the contracts be amended to include: "where the requirement to update a vehicle results in, or is likely to result in, an increase in the contract driver's operating expenses, that requirement will be subject to, and unenforceable in the absence of, agreement between the company and the contract driver on a trip rate to be applicable to the use of the new vehicle".

This landmark decision pursuant to the Independent Contractors Act provides owner-drivers with an avenue to pursue in the event that unfair terms are imposed on them.

DAVID LALIC is a partner in Jackson Lalic Lawyers and specializes in providing legal advice to the transport industry. David Lalic can be contacted on 02 9262 1700 or dlalic@jacksonlalic.com.au