

Unfair Contracts

David Lalic writes in Owner Drive June 2008 -

Owner-drivers might find themselves in a dispute over their contract. For Example, Andrew Smith (not his real name) spent approximately \$280,000 buying a truck and trailer because he was promised ongoing work worth approximately \$2,000 per day. The ongoing contract was cancelled and the source of income lost. Mr Smith was left with an expensive truck and trailer and no work.

This is a classic example of an unfair contract. An application to vary an unfair contract can be made by a contractor or subcontractor working in the transport industry.

Contractors and subcontractors employed in the transport industry in NSW can ask the NSW industrial Relations Commission ("Commission") to vary contracts or arrangements, whether oral or in writing, for services provided.

Section 106 of the Industrial Relations Act of 1996 NSW ("the Act") gives contractors and subcontractors the right to vary any contract or arrangement under which they perform work if the contract is found to be unfair, harsh or unconscionable or against public interest. Section 276 of the Industrial Relations Act (Queensland) also enables the Queensland Industrial Relations Commission to declare void or vary contracts which are declared to be unfair.

The Commissions powers under the unfair contract laws are extremely wide and the commission has the power to review contracts or arrangements whether the parties are in breach of the contracts or arrangements or not. The court also has the power to order that money be paid to the contractor or subcontractor.

In the past, the Commission has been prepared to vary unfair contracts by extending periods of notice, severance payments on redundancy and working conditions

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