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First test of the *Independent Contractors Act 2006* – *Keldote Pty Ltd –v– Riteway Transport Pty Ltd*

Truckies finally recover damages in first unfair contract case

The Federal Magistrates Court has finally ordered transport company Riteway Transport Pty Ltd (“Riteway”) to compensate three truck drivers under the *Independent Contractors Act 2006* (“Act”). The order is the third and final stage of what is understood to be the first proceedings to test the Act.

The case is a significant victory for independent contractors as well as an important lesson for businesses that engage independent contractors.

Facts of the case

The case concerns three truck drivers who supplied line haul trucking services as independent companies to Riteway. The three truck drivers did not have written contracts with Riteway and the terms of their commercial contract were taken to be the terms of an agreement between Riteway and the Transport Workers Union (“Contract”).

In early 2007, Riteway informed the truck drivers that they had to spend \$100,000 each to upgrade their trucks into B-doubles or else their services would be terminated. The truck drivers were prepared to upgrade on the condition that they were paid a higher amount per run to cover the cost of the upgrades.

Riteway offered \$1,412 per run (which amounted to a pay rise of about \$218 per run). The truck drivers argued that this was unreasonable as the rise in pay per run would not cover the costs of paying off the upgrades. Negotiations failed between the parties and the truck drivers went on to pursue an unfair contracts action under the Act in the Federal Magistrates Court.

Findings

- The proceedings were conducted in three stages.
- In the first stage of the proceedings, the truck drivers unsuccessfully sought interim orders under section 16(3) of the Act against Riteway to prevent Riteway’s imminent termination of their services.
- In the second stage, the truck drivers sought relief on the basis that their contracts were unfair or harsh. On 22 August 2008, it was found that the contracts were unfair because they allowed Riteway to unilaterally require that the truck drivers provide a truck that was considerably different from the one they had already provided under the contract without providing any financial compensation. On 5 May 2009 the Court ordered the terms of the contract be changed to remove the unfairness.
- On 16 June 2010, in the third and final stage, the Court ordered compensation for loss of earnings by failure to give reasonable notice and loss of goodwill by an award of \$30,800, \$29,000 and \$38,000 plus interest to each of the three truck drivers respectively.

The Act

The Act came into force in 2007 and aims to recognise and protect independent contractors in the Australian workplace.

The Act applies to services contracts which are defined for the purposes of the Act to be contracts:

1. to which an independent contractor is a party; and

2. that relate to the performance of work by an independent contractor; and
3. which have the required constitutional connection – that is, at least one party to the contract is either the Commonwealth or a corporation incorporated in Australia or has the stipulated territorial connection.

The Act provides the Federal Court and the Federal Magistrates Court with the jurisdiction to review a services contract if that contract is alleged to be unfair or harsh. The Act provides that the Court may make an order to set aside whole or part of a service contract or make orders to vary the service contract. The Court may also make interim orders to preserve the positions of the parties while the matter is being determined.

By enabling the option to bring actions through the Federal Magistrates Court, the Act provides independent contractors easier access to remedial actions.

What implications does the result have?

Keldote Pty Ltd –v– Riteway Transport Pty Ltd is the first case where the unfair contract provisions of the Act have been tested. The result shows that independent contractors can successfully address contractual problems they may have with companies (and in particular large companies with which independent contractors have reduced bargaining power) through the Act. The case serves as a warning to all businesses that engage independent contractors.

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