

(1706)

**SERIAL C2223**

**COURIERS PLEASE PTY LTD CONTRACT DETERMINATION**

Schedule of Consolidated Award Published on 14.11.2003 and Subsequent Variations Incorporated

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## **DETERMINATION**

### **Arrangement**

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## 1. Definitions

In this Contract Determination, unless otherwise required by the context:

"Act" means the *Industrial Relations Act* 1996.

"Courier Contract" means the individual contract between each of the Contract Carriers and the Principal Contractor tendered and marked as an exhibit in these proceedings.

"Contract Carrier" means a carrier engaged by the Principal Contractor.

"Contract of Carriage" has the meaning given to that expression by the Act.

"Principal Contractor" means Couriers Please Pty Ltd (ACN 006 144 734).

"Shuttle Driver Contract" means the individual contract between each of the Contract Carriers and the Principal Contractor tendered and marked as an exhibit in these proceedings.

"Union" means the Transport Workers' Union of New South Wales (registered under the Act as an Association of contract carriers).

Words importing the singular numbers shall include the plural number and vice versa.

Words importing the masculine gender shall include the female gender and words importing persons shall include corporations.

## 2. Area, Incidence and Duration

- 2.1 The contract determination shall operate in respect of all contracts of carriage between the Principal Contractor and Contract Carriers performed within the state of New South Wales.
- 2.2 The contract determination shall be read in conjunction with the Courier Contract and the Shuttle Driver Contract ("the Contracts"). Where there is any inconsistency between this contract determination and the Contracts this contract determination shall apply.
- 2.3 This contract determination exempts the Principal Contractor from the operation of the following contract determinations, or any such other contract determination that might otherwise apply, as from time to time amended:
- (a) Transport Industry - General Carriers Contract Determination.
  - (b) Transport Industry - Courier and Taxi Truck Contract Determination.
  - (c) Transport Industry - Excavated Materials, Contract Determination.
  - (d) Transport Industry - Quarried Materials, &c., Carriers Contract Determination.
  - (e) Transport Industry - Car Carriers (NSW) Contract Determination.
  - (f) Transport Industry - Waste Collection and Recycling Contract Determination.
  - (g) Transport Industry - Courier and Taxi Truck (Superannuation) Contract Determination.
  - (h) Transport Industry - Interstate Carriers Contract Determination.
- 2.4 This contract determination shall operate on and from 13 March 2003 and shall have a nominal term of three years.

### 3. Consultation Required Before Exercising Contractual Rights

The Principal Contractor will consult with the Union in relation to affected Contract Carriers who are Union members, and will consult with affected Contract Carriers who are not Union members, before:

- 3.1 exercising its rights under clause 1.1.6 of the Courier Contract and/or clause 1.1.5 of the Shuttle Driver Contract (concerning the Principal Contractor declaring things to be services);
- 3.2 exercising its rights under clause 2.3.3 of the Courier Contract and/or clause 2.3.2 of the Shuttle Driver Contract (concerning changes to boundaries under the Courier Contract and changes to the locations of termini under the Shuttle Driver Contract);
- 3.3 requiring Contract Carriers to pick up or deliver freight for a customer at a rate which is lower than the normal rates under clause 3.4 of the Courier Contract as a result of the Principal Contractor negotiating that lower rate with that customer;
- 3.4 designating additional items under clause 6.4.4. (a) of the Courier Contract and/or clause 6.4.5 (a) of the Shuttle Driver Contract (concerning items for which the Contract Carriers must reimburse the Principal Contractor.
- 3.5 exercising its rights to introduce any new communications system for which the Contract Carriers must reimburse the Principal Contractor under clause 6.4.4 (f) of the Courier Contract;
- 3.6 exercising its rights to introduce any new linehaul or shorthaul services for which the Contract Carriers must reimburse the Principal Contractor under clause 6.4.4(1) of the Courier Contract.

#### **4. Other Responsibilities of the Principal Contractor and Contract Carrier**

- 4.1 The Principal Contractor will exercise its rights under clause 6.3 of any Contract only where there has been a significant or repeated breach of the rules or instructions.
- 4.2 The Principal Contractor will, if practical, seek that a Contract Carrier rectify a breach of the contract before seeking reimbursement under clause 6.4.4(h) of the Courier Contract and/or clause 6.4.5(e) of the Shuttle Driver Contract.
- 4.3 Contract Carriers must scan customer generated bar codes as coupons, as and when required to do so.

## 5. Dispute Procedure

Any dispute, difficulty or question arising between the parties to this determination, except for any dispute, difficulty or question arising in connection with clause 3.2 of the Courier Contract, or clause 9.5 of any Contract, shall be dealt with in the following manner:

- 5.1 Affected Contract Carriers, and at his/her/their request, the representative of the Union on the job, shall negotiated with the Principal Contractor or the Principal Contractor's nominated representative.
- 5.2 If the question, dispute or difficulty is not resolved, either party may refer the matter to an Organiser, or other Official of the Union, who may, either personally or by nominated representative, endeavour to negotiate a settlement on the question, dispute or difficulty,.
- 5.3 If negotiations contemplated in subclauses 5.1 and 5.2 above are unsuccessful, the parties may notify the dispute in accordance with the Act, or take the matter to such other person or body as may be agreed by the parties concerned to act as arbitrator.

This disputes procedure will apply to the exclusion of clause 12.5 of the Courier Contract and clause 11.5 of the Shuttle Driver Contract.

## 6. Sale of Run

If a Contract Carrier ("Seller") sells his or her run ("Run"), then for a period of 12 months after the date the sale takes effect ("Sale Date"), the Seller must not within the geographical area of the Run:

- (a) engage or prepare to engage in any business or activity which is the same as, substantially similar to or competitive with the Business; or
- (b) solicit, canvass, approach or accept any approach from any Customer with a view to obtaining the custom of the Customer in a business that is the same, similar or competitive with the Business; or
- (c) interfere with the relationship between the buyer and its Customers in the Run; where

"Business" means the business of providing courier services in relation to the Run.

"Customer" means any person who was a customer of the Seller in relation to the Run at any time during the 12 months prior to the Sale Date.

"Engage in" means to participate, assist or otherwise be directly or indirectly involved including as a member, shareholder, unitholder, director, consultant, adviser, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier.

This clause does not apply for work within the geographical area of the Run performed as an employee or contract carrier for an existing transport business (other than a business owned or substantially owned by the Contract Carrier) where such work is merely an incidental part of the person's engagement.