

REFERRAL OF DISPUTE
IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SITTING AS
THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

CITATION : 2019 WAIRC 00096

CORAM : COMMISSIONER D J MATTHEWS

HEARD : TUESDAY, 22 JANUARY 2019, WEDNESDAY, 23 JANUARY 2019

DELIVERED : WEDNESDAY, 27 FEBRUARY 2019

FILE NO. : RFT 8 OF 2016

BETWEEN : GUY COURT
Applicant
AND
BIS INDUSTRIES LTD
Respondent

CatchWords : Referral of dispute - Owner-driver contract - Whether respondent engaged in unconscionable conduct in relation to acquisition of the applicant's services - Whether contract breached in relation to fuel prices - Claims dismissed

Legislation : *Owner-Drivers (Contracts and Disputes) Act 2007*

Result : Claims dismissed

Representation:

Counsel:

Applicant : Mr R Moore as agent
Respondent : Mr T Russell of counsel

Solicitors:

Applicant : (Not applicable)
Respondent : Ashurst

Reasons for Decision

- 1 On 25 June 2016 Mr Guy Court, an “owner-driver” for the purposes of the *Owner-Driver (Contracts and Disputes) Act 2007*, referred several matters to this Tribunal. Those matters arose out of an “owner-driver contract” between Mr Court and the respondent as that term is defined by the *Owner-Driver (Contracts and Disputes) Act 2007*.
- 2 Between 25 June 2016 and the date of the hearing to which this decision relates, there was a great deal of activity on the matter, and some disputes were resolved. Ultimately, two issues were litigated before the Tribunal being:
 - (1) Mr Court’s claim that the respondent had engaged in conduct that was, in all the circumstances, unconscionable with respect to him in relation to the acquisition of his services; and
 - (2) Mr Court’s claim that, contrary to the owner-driver contract, the respondent had not facilitated his receipt of fuel at a price “substantially cheaper than bowser price.”
- 3 At the end of the two day hearing Mr Court was told by me that his claims would fail and that my reasons for this would be delivered in due course.
- 4 These are those reasons.
- 5 In relation to (1) above, Mr Court led no evidence that even raised a question about the quality of the respondent’s conduct, let alone entered the territory of having me consider whether the conduct was unconscionable as that term is used in section 30 *Owner-Driver (Contracts and Disputes) Act 2007*.
- 6 The evidence led by Mr Court of alleged relevance was that other owner-drivers engaged by the respondent to do broadly similar work to that done by Mr Court paid less for fuel than Mr Court did under their agreements with the respondent.
- 7 That other owner-drivers may have paid less for fuel than Mr Court cannot without more, establish unconscionable conduct. There has to be some evidence actually going to unconscionability for the issue to arise.
- 8 In this case there was no such evidence.
- 9 Mr Court may have imagined that it might be enough to point to different treatment to make out unconscionable conduct, perhaps encouraged by such magnification of section 30(2)(f) *Owner-Driver (Contracts and Disputes) Act 2007* that it no longer took its place, in Mr Court’s mind, as merely a possible indicia of unconscionability among many other relevant matters.
- 10 In truth, not only was section 30(2)(f) *Owner-Driver (Contracts and Disputes) Act 2007* blown out of all proportion by Mr Court, there was no evidence really led to even bring it properly into play. I learned nothing about whether the respondent’s conduct toward Mr Court was consistent with its conduct in similar transactions between the respondent and other similar owner-drivers. All Mr Court could tell me was that some of them paid less for fuel. The differences, to the extent they were established, do not even give rise to a suspicion of unconscionability let alone make it out.
- 11 It is to be noted that Mr Court raised nothing about the circumstances which led to him entering the owner-driver contract as being unfair or that the owner-driver contract was in itself uncommercial or unfair in any way. It was only said to be unfair due to a supposed

comparison which I ultimately find to be so limited, and so uninformed, as to be, in a matter where all the circumstances should be considered, completely meaningless.

- 12 In relation to (2) above, Mr Court said he got, over the course of his engagement with the respondent, a discount on fuel of 11%, as compared to the bowser price. No evidence was led or argument made to the effect that this was not “substantially cheaper than the bowser price”.
- 13 Mr Court’s claims litigated before me fail and are dismissed.