

(1878)

**SERIAL C5924**

**TRANSPORT INDUSTRY - REDUNDANCY (STATE) CONTRACT DETERMINATION**

Schedule of Contract Determination Published on 28.9.2007 and Subsequent Variations Incorporated

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## CONTRACT DETERMINATION

### 1. Arrangement

1. Arrangement
2. Title
3. Application and Duration
4. Introduction of Change
5. Redundancy
6. Severance Pay
7. Dispute Resolution Procedures
8. Anti-Discrimination
9. Savings Clause
10. Definitions

### SCHEDULE A

Running Costs Component

## 2. Title

This contract determination shall be known as the Transport Industry - Redundancy (State) Contract Determination.

### 3. Application and Duration

- (i) This contract determination shall apply to all contracts of carriage and shall bind all carriers and principal contractors party to such contracts of carriage, except for contracts of carriage where the principal contractor engages less than 15 employees and carriers in total immediately prior to the termination of engagement for reasons arising from changes in production, program, organization, structure or technology.
- (ii) Notwithstanding anything contained elsewhere in this contract determination, this contract determination shall not apply where the termination is as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty.
- (iii) This determination shall, subject to clause 9(iv), operate as a variation to any other contract determination that otherwise would apply, to the extent of any inconsistency.
- (iv) This contract determination shall take effect on 2 August 2007 and shall remain in force for a period of 3 years.

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#### 4. Introduction of Change

- (i) Principal Contractors Duty to Notify
  - (a) Where a principal contractor has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on carriers, the principal contractor shall notify the carriers who may be affected by the proposed changes and the union to which they belong.
  - (b) "Significant effects" include termination of engagement, major changes in the composition, operation or size of the principal contractor's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of carriers to other work or locations and the restructuring of jobs.
- (ii) Principal Contractor's Duty to Discuss Change
  - (a) The principal contractor shall discuss with the carriers affected and the union, inter alia, the introduction of the changes referred to in subclause (i) of this clause, the effects the changes are likely to have on carriers and measures to avert or mitigate the adverse effects of such changes on carriers, and shall give prompt consideration to matters raised by the carriers and/or the union in relation to the changes.
  - (b) The discussions shall commence as early as practicable after a definite decision has been made by the principal contractor to make the changes referred to in subclause (i) of this clause.
  - (c) For the purpose of such discussions, the principal contractor shall provide to the carriers concerned and the union all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on carriers and any other matters likely to affect carriers, provided that any principal contractor shall not be required to disclose confidential information the disclosure of which would adversely affect the principal contractor.

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## 5. Redundancy

### Discussions Before Terminations

- (a) Where a principal contractor has made a definite decision that the principal contractor no longer wishes the job the carrier has been doing done by anyone pursuant to paragraph (a) of subclause (i) of Clause 4, Introduction of Change, and that decision may lead to the termination of engagement, the principal contractor shall hold discussions with the carriers directly affected and with the union.
- (b) The discussions shall take place as soon as practicable after the principal contractor has made a definite decision which will invoke the provision of subclause (a) of this clause and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the carriers concerned.
- (c) For the purposes of the discussion the principal contractor shall, as soon as practicable, provide to the carriers concerned and the union all relevant information about the proposed terminations, the number and categories of carriers likely to be affected, and the number of carriers normally engaged and the period over which the terminations are likely to be carried out.

Provided that any principal contractor shall not be required to disclose confidential information, the disclosure of which would adversely affect the principal contractor.

## 6. Severance Pay

- (i) Where a carrier is to be terminated for reasons arising from changes in production, program, organisation, structure or technology, subject to further order of the Commission, the principal contractor shall pay the carrier the following severance pay in respect of a continuous period of engagement:

- (a) If the natural person who performs the driving or riding duties pursuant to the contract of carriage between the principal contractor and the carrier (being a person permitted to do so under paragraphs (a), (b) or (c) of section 309(1) of the NSW *Industrial Relations Act* 1996 is under 45 years of age, the principal contractor shall pay in accordance with the following scale:

Years of Engagement	Under 45 Years of Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay
2 years and less than 3 years	7 weeks pay
3 years and less than 4 years	10 weeks pay
4 years and less than 5 years	12 weeks pay
5 years and less than 6 years	14 weeks pay
6 years and over	16 weeks pay

- (b) Where the natural person who performs the driving or riding duties pursuant to the contract of carriage between the principal contractor and the carrier (being a person permitted to do so under paragraphs (a), (b) or (c) of section 309(1) of the NSW *Industrial Relations Act* 1996 is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Engagement	45 Years of Age and Over Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks pay
2 years and less than 3 years	8.75 weeks pay
3 years and less than 4 years	12.5 weeks pay
4 years and less than 5 years	15 weeks pay
5 years and less than 6 years	17.5 weeks pay
6 years and over	20 weeks pay

- (c) "Weeks pay" means the weekly average gross remuneration the carrier received from the principal contractor for the previous twelve month for work performed by the carrier on behalf of the principal contractor, less the percentage amounts set out in Schedule A to this contract determination on account of running costs.

- (ii) Incapacity to pay - Subject to an application by the principal contractor and further order of the Commission, a principal contractor may pay a lesser amount (or no amount) of severance pay than that contained in subclause (i) of this clause.

The Commission shall have regard to such financial and other resources of the principal contractor concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause (i) of this clause will have on the principal contractor.

- (iii) Alternative work - Subject to an application by the principal contractor and further order of the Commission, a principal contractor may pay a lesser amount (or no amount) of severance pay than that contained in subclause (i) of this clause if the principal contractor obtains acceptable alternative work for the carrier.

- (iv) Severance pay not to be construed as pay in lieu of reasonable notice - The severance pay in subclause (i) of this clause shall not be construed as satisfying, either in whole or in part, the principal contractor's obligation to provide reasonable notice of termination or pay in lieu thereof.

### **7. Dispute Resolution Procedures**

- (i) Any disagreements or disputes arising from the implementation of this contract determination shall be resolved as follows:
  - (a) Discussions shall occur between the principal contractor and the carriers concerned. A carrier may request that the Secretary of the union or his nominee represent the carrier; and
  - (b) If these negotiations are unsuccessful the dispute shall be referred to the Commission for conciliation and/or arbitration.



## 8. Anti - Discrimination

- (i) It is the intention of the parties bound by this contract determination to seek to achieve the object in section 3(f) of the NSW *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this contract determination the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this contract determination are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the contract determination which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*; or
  - (c) a party to this contract determination from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (iv) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

## 9. Savings Clause

- (i) Nothing in this contract determination shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which a carrier may be entitled to under any existing redundancy arrangement.
- (ii) Nothing in this contract determination shall be construed as abrogating, detracting or diminishing any claim which a carrier may have against a principal contractor with respect to:
  - (a) any sum of money (however described) paid by the carrier as a premium or fee paid in connection with the entry by the carrier into the contract(s) of carriage with the principal contractor or a predecessor to the principal contractor; or
  - (b) the loss of utility and/or diminution of value of the vehicle previously used by the carrier in connection with the contract(s) of carriage with the principal contractor as a consequence of the carrier's termination by the principal contractor. Providing that the fixed costs component of any severance payment under this contract determination may be offset against such a claim.
- (iii) Nothing in this contract determination, including these provisions relating to severance pay, shall be construed as replacing, diminishing or in any way affecting any existing rights which carriers have, whether under a contract determination, contract agreement, or any collective or individual agreement, contract or arrangement, to a payment upon termination of engagement where that payment is not in the nature of severance or redundancy pay.
- (iv) Notwithstanding subclause (iii), where a contract carrier engaged under a relevant contract determination has received a termination payment from a principal contractor the amount payable under this Determination shall be reduced by the same amount. Where a termination payment has been made which is greater than the amount payable under this Determination then no further amount shall be payable to the carrier.

For the purposes of this subclause:

- (a) "relevant contract determination" shall mean the Boral Country - Concrete and Quarries Contract Determination [357 IG 214], Boral Resources (NSW) Sydney Metropolitan Concrete Contract Determination [354 IG 301], Hanson Construction Material Pty Ltd Concrete Carriers Contract Determination [354 IG 272], Transport Industry - Readymix Holdings Pty Ltd Concrete Cartage Contract Determination [348 IG 1028], or the Transport Industry - Metromix Concrete Haulage Contract Determination [349 IG 1025].
- (b) "termination payment" shall mean any payment made by the principal contractor to the contract carrier on termination of the carrier's engagement and shall include any redundancy or severance payment, any truck purchase payment, truck lease payout payment, and any company dissolution payment made by the principal contractor in connection with the termination.

## 10. Definitions

(i) In this contract determination, unless otherwise required by the context:

"Agreement" means an agreement between a principal contractor and either the Union or a group of carriers.

"Carrier" means a carrier undertaking a contract of carriage, as defined by Section 309 of the NSW *Industrial Relations Act* 1996, as amended.

"Commission" means the Industrial Relations Commission of New South Wales.

"Contract Agreement" means an agreement between a principal contractor and either the Union or a group of carriers, approved by the Industrial Relations Commission of New South Wales, in accordance with the provisions of the *Industrial Relations Act* 1996 as amended.

"Engagement" means regular and/or systematic engagement for a period of at least 6 months.

"Years of Engagement" includes the years of engagement of the carrier with a previous principal contractor where that previous principal contractor has transmitted all or part of its business to the current principal contractor.

"Termination" includes where the principal contractor ceases to enter into contracts of carriage with a carrier or ceases to allocate work to a carrier or where a fixed term contract of carriage terminates.

"Union" means the Transport Workers' Union of New South Wales.

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

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

## SCHEDULE A

### Running Costs Component

Class Of Vehicle	Percentage of Costs (%)
Rigid vehicle only:	
Less than 2 tonnes	18.90
Not less than 2 tonnes and less than 5 tonnes	21.00
Not less than 5 tonnes and less than 8 tonnes	24.11
Not less than 8 tonnes and less than 10 tonnes	23.20
Not less than 10 tonnes and less than 12 tonnes	25.56
Not less than 12 tonnes and less than 14 tonnes	26.14
Not less than 14 tonnes	28.00
Single Axle Drive Prime Mover	30.70
Bogie Axle Drive Prime Mover	28.52

NOTE: The percentage of costs attributable to the running component is calculated as being the average cost of the running component of the costs over a five year period.