

Pass the Parcel

Employment Court decision delivers warning for owner drivers

May 2020

Courier drivers have long been categorised by the Courts as contractors and not employees, largely due to industry practice. The Employment Court recently reconsidered how owner drivers in the courier sector were to be classified in the case of Leota v Parcel Express Limited. Mr Leota was a driver who provided courier services to Parcel Express Limited under an agreement which identified the arrangement as a contract for services. Although the Court said the decision related to the specific facts of Mr Leota's relationship with Parcel Express Limited, the decision to declare him an employee may set precedent for other owner drivers, especially those operating under a similar model and contract to that used by Parcel Express.

MR LEOTA'S CASE

Mr Leota began providing courier services for Parcel Express in 2018, receiving a guaranteed \$240 per day for completing a delivery run specific to his contract. Prior to starting he was told by the company he would need to buy his own van (at his own expense), which would need to have Parcel Express signwriting. Mr Leota arranged a second-hand van from a third party and Parcel Express loaned him much of the money for the purchase, deducting it from his pay over regular intervals. He signed an agreement which declared his status to be that of a contractor.

The contract itself had many of the facets of an employment agreement. It gave Parcel Express a large degree of control over Mr Leota:

- There were restrictions on the colour, size and type of van he could drive;
- The boundaries of his daily run (Panmure) were set and could not be changed;
- He had to wear a company uniform;
- He had to comply with the company manual and any directions from any Parcel Express manager;
- He could not take any more than 20 days' holiday during any 12-month period; and
- He had a restraint of trade clause limiting his activities post-termination.

Parcel Express ended up expressing concerns over Mr Leota's conduct which brought their arrangement to a close. Mr Leota then sought a declaration from the Court that his correct legal status was that of an employee. That would

give him access to a suite of rights, including the ability to raise a personal grievance in respect of the way his arrangement with Parcel Express had been ended.

THE COURT'S DECISION

The Court decided Mr Leota was an employee. It said the contractor status the parties used in their agreement was not determinative of the real nature of the relationship. The Court also decided that, while industry practice was relevant, there was a limit to how useful this test could be as it could lead to the "tail wagging the dog". Another courier company (Freightways Limited) intervened in the case but their submission that a person such as Mr Leota should have known they were a contractor because they chose to work in an industry where workers are routinely contractors, was largely rejected.

The Court examined how the working relationship operated in practice. This was very much akin to an employment relationship, largely due to the level of control Parcel Express had over the work. Mr Leota could not work outside the boundaries of his run and could only pick up from, and deliver to, customers of Parcel Express. He could not change his days of work and was required to be back at the depot at three specified times during the working day. The Court said there was no doubt Parcel Express wished to exert a high degree of control over Mr Leota for operational purposes and to meet its customers' needs (i.e. both reasons benefitted the company and not Mr Leota).

The Court also examined what it referred to as the "economic reality" of the situation in light of Parcel Express' claim that Mr Leota gained advantages by being a contractor and was free to "grow" his business. Mr Leota did not have time to engage in client recruitment for his own business as Parcel Express was using his services to help it build its own business. Even if Mr Leota did secure new customers within his run area it was not guaranteed he would get any greater financial reward for doing so.

The Court also placed much weight on the fact that Mr Leota was relatively "naïve" and spoke English as a second language. He would not have been aware of the distinction between an employment relationship vs. a principal/contractor relationship and he had more or less signed the agreement without question.

The Court cautioned that this decision was not reflective of the overall status of all courier drivers and only Mr Leota's status.

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TAKAWAYS FROM THE CASE

This case could well have implications beyond the owner driver scenario. While the Court undertook its analysis by applying the usual tests, the Court was less inclined to be persuaded that arrangements typical in a particular sector were a weighty consideration.

Businesses engaging any of its workers as contractors should review how the relationship operates in practice and seek advice on whether the agreement will stand up if challenged in Court.

A copy of the decision can be found [here](#).

Please contact Glenn or Jeremy if you would like to discuss this article or case further.

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