Supplementary Submission to the "Select Committee on Job Security"

11 October 2021

Transport Workers Union of Australia

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1. This submission has been prepared to supplement those submissions that have already been prepared by the Transport Workers Union of Australia (**TWU**) to the Select Committee on Job Security (**the Committee**) dated 5 April 2021.

2. This submission will highlight the insecure work crisis in transport brought on by the 'Amazon Effect' of cost-cutting from the top of supply chains and the competitive threat from exploitative models like AmazonFlex. Recently, this crisis has unfolded across Australia's major transport operators, with workers experiencing attacks on their job security during enterprise bargaining, resulting in industrial action.

A boom and bust industry

3. Early in the pandemic, transport workers across the industry agreed to defer negotiations to support their employers during uncertain times. However, demand boomed and revenues hit record highs for transport operators and the wealthy retailers whose goods they transport. Despite this affluence at the top, transport supply chains are crippled by a financial squeeze from unregulated cost-cutting coupled with the existential threat to employers from exploitative gig models like Uber and AmazonFlex, which are expanding rapidly. As a result, transport has seen a rise in outsourcing as operators attempt to slash secure jobs to compete.

4. In April 2021, TWU members commenced bargaining over their enterprise agreements, which is continuing to date. To compensate for the surge in outsourcing, workers are seeking reasonable job security provisions in their agreements. Resistance from transport operators to commit to the protections speaks volumes of the state of the industry. Of the relevant transport companies that the TWU has been in negotiations with, those considered in this submission include:

    a. FedEx Express Australia Pty Limited (**FedEx**);

    b. StarTrack Express Pty Limited and StarTrack Retails Pty Limited (**StarTrack**); and

c. Toll Holdings Limited and its wholly owned subsidiaries (**Toll**).

5. The term "job security" and how it is achieved differs based on the transport company with which the TWU is engaging. However, there are distinct commonalities that impact each business in different ways.

Outsourcing

6. Outsourcing of work to labour hire workers and contractors has accelerated at an alarming rate within the road transport industry. The reasons why this increase has occurred lends itself directly to the race to the bottom which has been the primary focus of the TWU for several decades. The race to the bottom occurs when competing market driven factors lead to downward pressure on transport companies to perform services at significantly lower rates as part of the contracting and tendering processes in place in the road transport industry. The result of these pressures is all too often a compromise on safety, fairness, and ongoing sustainability in the industry.

7. In recent years, the emergence of new road transport operators in the so-called 'Gig Economy' has heightened these pressures. Gig economy companies such as Uber and Amazon have been able to circumvent their obligations under existing laws in order to gain an unfair competitive advantage in the road transport industry. This 'Amazon Effect' has led traditional road transport companies such as FedEx, StarTrack & Toll, to increase their reliance on supplementary labour and outsourcing.

8. In certain businesses, such as StarTrack and FedEx, the TWU has noticed a significant increase in work being contracted out in preference of direct hire employees whose terms and conditions are determined under the relevant enterprise agreement negotiated with the TWU.

9. At StarTrack, the TWU has seen an increase in the business engaging agency workers/outside hire/labour hire workers to assist in the performance of both the warehousing and freight tasks. In South Australia, workers estimate around 70% of the work is now carried out by labour hire workers and in WA air freight, only one in nine workers is a direct employee of StarTrack. In addition, the increase in the engagement of small fleet owners to perform work is a cause of significant concern. The total value in the 2019-2020 of labour hire and related agencies was

more than $100 million. We also know by the Company's own admission that approximately 37% of all labour engaged by StarTrack and Australia Post are contractors.

10. This trend is also mirrored at FedEx where directly engaged owner drivers paid rates commensurate to employees are being phased out and replaced by owner drivers on inferior pay tied to the Award rather than the enterprise agreement. These owner drivers have fewer rights, such as guaranteed hours, superannuation and redundancy provisions. These lower paid drivers now make up two thirds of all owner drivers engaged by FedEx, demonstrating a trend towards slashing pay and conditions.

11. Using StarTrack as an example, there is a risk that labour hire and outside hire workers will be remunerated at rates which are less than that set out in the relevant enterprise agreement, including penalty rates. This is a cause of concern in two ways:

    a. When two transport workers are engaged side by side and one is remunerated at rates significantly less than the other, the worker whose rate of remuneration is higher has their ongoing job security at risk for the purposes of alleged cost efficiencies; and

    b. When outside labour is regularly engaged by any transport company the result is generally poorer safety outcomes and increased inefficiencies due to the financial pressure to rush or take risks, and because skilled labour with intimate knowledge of the businesses operations is not properly valued and retained.

Case Study: StarTrack and SOS Transport

12. SOS Transport is a labour hire company regularly engaged by StarTrack at its yards in New South Wales including Minchinbury and Greenacre. SOS Transport operates predominately as labour hire for freight handling tasks, but the business also engages owner drivers and subcontractors who are required to obtain their own Australian Business Number.

13. SOS Transport completes freight handling work for StarTrack at its Minchinbury and Greenacre facilities. The TWU is aware of several other locations New South Wales where small amounts of transport work are performed by the Company.

14. Despite the provisions of the applicable agreement setting out the requirement for certain rates of pay to be afforded to outside hire workers, the TWU have found at least one example where a

worker engaged by SOS Transport had not been paid the site rates prescribed in the StarTrack-TWU negotiated agreement. This has been raised by TWU Officials to SOS Transport representatives without success.

15. In this circumstance the matter was subsequently raised with StarTrack management. This was escalated and rectified as far as the TWU is aware. This example, whilst concerning, is also indicative of the bigger picture. It is incumbent on StarTrack to ensure that any labour or agency worker is remunerated in accordance with the arrangements of the applicable enterprise agreement and to ensure that proper checks are undertaken in compliance with the arrangements between the parties.

16. The TWU knows that the outsourcing of work at rates significantly below the agreement both threatens the ongoing engagement of direct hire employees and, contributes to the ongoing race to the bottom that compromises supply chains and puts the ongoing safety of transport workers at risk.

Kim White v APS Group/StarTrack

17. A further example of the TWU's concerns about the pay, conditions and rights of labour hire workers at StarTrack is demonstrated in the matter of Kim White which is the subject of a general protections dispute before the Fair work Commission in Brisbane. Please see attached a copy of the application to the Fair Work Commission hereto annexed to this submission and marked "**TWU1**".

18. In August, Ms White sought to clarify her rate of remuneration with APS (Industrial) Pty Limited (**APS**) after she noticed a drop in her pay. The email response she received stated: "StarTrack notified APS this year that they wanted us to revert back to Award conditions for all sites rather than their EBA [Enterprise Agreement]". After a year of regular hours plus overtime, Ms White last worked a shift at Star Track on 20 August 2021 – the same day this email was used as evidence by the TWU of the job security threat to employees.

19. When Ms White did not receive her next roster, her husband who is directly employed at StarTrack contacted his manager. The response was that Kim would "no longer be required".

20. This is a perfect example of the threat to job security for direct hire employees and indeed, those engaged as supplementary labour at StarTrack. When an individual transport worker seeks

to be remunerated at the appropriate rate, they are treated with derision and offered no further work – this cannot stand in the long term.

Job Security Clauses

21. In negotiations with StarTrack, FedEx and Toll the TWU has sought to include clear provisions that safeguard direct hire employees from the ongoing job security concerns raised in the industry. To date, the primary outstanding claims put by the TWU to the relevant transport companies have not been properly considered and included in the relevant arrangements.

22. In relation to FedEx and StarTrack – core claims pursued by the TWU (subject to the existing terms of the enterprise agreement) are as follows:

    a. **Enhanced consultation clauses**, particularly in relation to decisions about the introduction of outside hire/agency workers/labour hire with a requirement for each FedEx and StarTrack to consult with the TWU before any definite decision is made. In relation to FedEx, the TWU has sought to incorporate provisions which ensure an improved working dialogue between the parties about key job security issues such as the engagement of outside hire and the rates payable to those workers.

    b. Improved transparency in relation to the engagement of alternate labour by **enhanced auditing and compliance provisions**. The greater transparency and access to relevant information is critical in the protection of our members ongoing interests. In the circumstances, it is hard to appreciate why any transport operator would not universally apply the same auditing and related compliance provisions across its entire national operations for the purposes of enforcing its own enterprise agreement. These provisions in their various forms, are critical in protecting the ongoing security of employment for direct hire employees.

    c. **Enhanced full utilisation** provisions that ensure that all available overtime is first offered to full-time direct hire employees, part-time direct hire employees and direct hire owner drivers before it is otherwise outsourced to labour hire agencies or any other form of alternate labour. These claims are critically important in ensuring that direct hire employees are rewarded for their loyalty and commitment to the company and limit the

engagement of supplementary labour. In the case of both FedEx and StarTrack these provisions have been rejected.

d. **Outside hire ratios** that limit the amount of outside hire engaged by the businesses and protect our members position within the business. The TWU knows that all too often if an alternate and cheaper labour option is available it is tempting for businesses – like StarTrack - to otherwise engage those cheaper workers. In relation to this the TWU makes 2 points:

   i. It is likely that where such labour is engaged it is unlikely to come at any real cost saving because there is a loss of efficiency and productivity that is otherwise ensured through directly engaged employees; and

   ii. The alleged cost benefit comes at a cost to the ongoing job security of those directly engaged by the business.

23. These clauses, though different subject to the relevant employer, are critical in protecting the ongoing interests not just of direct hire employees but also the efficient operations of the transport operators itself. Despite the necessity, the TWU has been met with reluctance to include these provisions. In the case of StarTrack, the TWU has been advised the clauses already exist or are not necessary. The TWU takes the opposite view – the critical necessity of these provisions is highlighted by the business' own admission that 37% of its workforce is outside labour of some form and workers' accounts of outsourcing ramping up, particularly in smaller ports around the country.[1]

24. In the alternate, FedEx has advised the TWU it does not consider these matters appropriate for inclusion in a negotiated enterprise agreement. This position is at stark ends with the view of the TWU, who strongly submit that any term which limits outsourcing or regulates it is critically important in safeguarding and protecting the industrial rights of the direct hire employees.

25. Further exacerbating the situation, is the circumstances at Toll. Toll is a business generally known and recognised as safe, fair, and sustainable with a good track record in its attitude towards its employees. However, under the pressure of the downward spiral in the industry, the business has been resistant to improving its current labour hire and related provisions during

[1] Australia Post 2021, "Response to Questions Taken on Notice", *Select Committee on Job Security,* received 30 April 2021, no.35. https://www.aph.gov.au/DocumentStore.ashx?id=0fac83ae-c33f-4543-a714-62806c4e5dba

negotiations with ongoing concerns about how it can be the safest operator possible and maintain its competitive position. It is important that operators like Toll, are not pressured to compromise on safety or the job security of their employees to maintain a competitive edge.

Conclusion

26. The matters identified in the above point to one clear conclusion – job security in transport is under threat. Due to a lack of regulation to maintain safe, secure standards throughout transport supply chains, workers are forced to exercise their legal rights to take industrial action to fight for protections for themselves and their families.
27. These issues are a direct product of the market pressures which the road transport industry is under. Supply chain pressures have long created a race to the bottom in conditions which has increased the reliance on outsourcing. The 'Amazon Effect' has led to a sharp increase in these pressures and now threatens the existence of the road transport industry in its entirety.
28. In order to address the underlying structural issues which give rise to such pressures, the TWU refers the Committee to the Recommendation 1, contained in its original submission. This recommendation calls on "*the Federal Government act to deliver a system which can provide workers in dependent arrangements, like owner drivers and gig workers in the transport sector, access to the rights they deserve while promoting fair, sustainable and safe competitive practices. This system must include:*
    a. *A tribunal which is empowered to inquire into work arrangements falling outside the category of employment and determine what rights and entitlements are appropriate to those arrangements.*
    b. *A tribunal which has the ability to determine the extent of rights and entitlements categories of workers should receive, depending on the degree or level of dependency.*
    c. *A tribunal which has the capacity to resolve (including where necessary through binding decisions) transport supply chain / contract network disputes, including those in relation to the unfair terminations of engagement.*
    d. *The ability for all workers to join and be represented by their union in the creation of such standards. An ancillary role for the tribunal to facilitate collective bargaining.*

    Ensuring all such standards and conditions are legally enforceable on all supply chain and contracting parties to ensure that minimum standards are upheld. An effective enforcement regime to ensure that these legally enforceable standards are realised."[2]

[2] TWU 2021, "Submission to the Select Committee on Job Security", 5th April 2021, pp.46-48 https://www.aph.gov.au/DocumentStore.ashx?id=c7b25fe4-97ca-4c5d-a5f0-8edaf761206f&subId=706183

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