



Transport Workers' Union of NSW

Richard Olsen State Secretary | P: 02 9912 0700 | F: 02 9891 4953 | E: info@twunsw.org.au | W: www.twunsw.org.au

ABN: 77 710 588 395

11 July 2018

Lauren Evans
Assistant Council Officer
Upper House Committees
Parliament of New South Wales
Macquarie St
SYDNEY NSW 2000

By email: PortfolioCommittee1@parliament.nsw.gov.au

Dear Ms Evans

Inquiry into Fresh Food Pricing in NSW – Questions on Notice

I refer to your email of 28 June 2018 regarding questions taken on notice by the Transport Workers' Union of NSW (TWU) in the course of giving evidence before Portfolio Committee No. 1 – Premier and Cabinet (Committee) at the public hearing of the Inquiry into fresh food pricing on Friday, 22 June 2018.

The TWU provides the following responses to the questions taken on notice.

1 Case studies

- 1.1 The Honourable Courtney Houssos asked during proceedings whether the TWU could provide any case studies demonstrating the lack of bargaining power experienced by transport workers when dealing with the major retailers in the fresh food supply chain¹.
- 1.2 The TWU is able to provide the following testimonies from members working in retail supply chains. (Please note that the names of the relevant drivers, transport companies and retailers in the following testimonies have been redacted for privacy and commercial-in-confidence reasons.)
- 1.3 The first testimony is from a TWU member named Steve. Steve has had many years' experience driving in the fresh food supply chain as an employee of a major transport operator servicing a major retail contract. Steve's job was to undertake 'outbound' work transporting produce from a distribution centre in Western Sydney to the retailer's supermarket stores located anywhere in the Sydney metropolitan area to as far south as Nowra, as far west as Dubbo, and as far north as Wyong. As a long-term TWU Member, Steve has also witnessed first-hand the extreme pressures put on, and lack of bargaining power experienced by, owner drivers and those drivers

¹ Transcript, page 60.

AUSTRALIA'S STRONGEST UNION, GIVING TRANSPORT WORKERS A POWERFUL VOICE SINCE 1888

PARRAMATTA

31 Cowper Street,
Parramatta NSW 2150
PO Box 649 Parramatta NSW 2124

NEWCASTLE

5 Canavan Drive,
Beresfield NSW 2322
P:

WOLLONGONG

59 Princes Highway,
West Wollongong NSW 2500
P:

performing 'inbound' work transporting produce from farm to distribution centres, and the chilling impacts on safety which these situations cause. Mark provided the following insights:

“

The [Western Sydney] DC is enormous. On a rough estimate, there would be in the order of 1000 truck movements per day at the centre; upwards of 500 trucks into the [Western Sydney] DC per day from [the retailer's] suppliers (the inbound work), and upwards of 350 trucks out per day distributing to [the retailer's] stores (the outbound work).

In terms of how the work is performed, from my observations as a driver from the [Western Sydney] DC ...for more than a decade, I would say the employed drivers with [the transport operator] ... are 100% by the book. By that I mean the drivers comply with all the driver regulations, such as the fatigue management regulations in NSW, and are paid correctly under the enterprise agreement. ...

The inbound workforce, and in particular the drivers who do long distance interstate work, is an entirely different story. The work can be done by anyone operating in the transport industry that can do the work. There is a lot of competition in the transport industry and the contractors are always placed under massive financial pressures. ... The way the owner-driver contracts work is, to put it simply, unless the wheels are turning then they are not getting paid: they get paid by the kilometre, not the hour. They don't get paid for rest breaks or rest days; they don't get paid for time spent at distribution centres loading or unloading; they don't get paid for additional time caused by delays on the road; they don't get paid when the truck is off the road getting serviced. If the truck isn't clocking up the kilometres, it's costing them money. The financial pressures in the industry are so tight that many owner drivers will try and make money, or try and make savings, wherever they can. Owner drivers will do all sorts of things to try and make their business profitable, including from my own observations and discussions with owner drivers:

- a. they try and get more kilometres than they should out of their tyres and out of their brakes;*
- b. they extend the time between services to save money and keep the trucks on the road longer;*
- c. they work literally around the clock doing long distance runs, and falsify their log-books to make it look like they are taking the breaks required by fatigue management laws when they are not;*
- d. they tamper with the speed limiters in their trucks to enable them to travel more than 100km/hr and drive at excessive speeds; and*
- e. some will take speed or other drugs (such as ADHD medication) to stay alert and stay on the road longer. ...*

The owner drivers don't get to set their own prices: their debt levels and costs are so high, and there is so much competition, that some owner drivers will take whatever work they can get and do whatever they can to make it pay. At the moment, there is no minimum price for a trip. The major users of freight transport services know that, and from my observations I would say they exploit the vulnerability of these guys.

I have seen inbound drivers coming in that are barely able to keep their heads up they are so exhausted. I and my colleagues have pointed these sorts of drivers out to management, but no-one wants to know about it. They just try and turn them around as quickly as possible and get them out of the [Western Sydney] DC. If that was one of my drivers, I would basically demand the company send him home.

That is what companies like [the transport operator] are competing against: we just would not allow those working practices to happen and as a consequence we won't pick up that inbound work. To do that sort of work safely, and in accordance with your fatigue management rules, you need to have at least a 10 hour break between trips, a real break, and if you do that and pay your drivers for it at the moment you just can't compete.

The big retailers ... don't help matters by constantly driving prices down and creating unrealistic delivery windows at their distribution centres. Each truck bringing goods into a distribution centre will have to get the truck into the centre within a designated time frame or window. If a driver misses their window, which can be very easy if you are coming a long distance (such as from Perth, Brisbane or the like) just because of what happens on the road (traffic, accidents, breakdowns etc), they have to wait until the centre has another open window. That can be hours. The driver isn't getting paid for that time, so they will do whatever it takes to make their windows. In addition, the owner of the truck will be slugged with a penalty (fine) for being late and missing the distribution centre window. The same happens if you are early: they won't unload you and you have to wait.

To use an example I have heard of, apparently a driver came to [the Western Sydney] DC from Perth. At least a 2-3 day journey by road. He had a two-hour delivery window. Apparently, he arrived 15 minutes late. The DC wouldn't unload

”

him and he had to wait until they had a slot available. ...

- 1.4 The second testimony is from a TWU member named Shaun. Shaun is an owner driver engaged by a major bread company to deliver bread products from a bakery in Inner-Western Sydney to various large supermarkets, food services (such as fast food outlets and service stations), government services (such as schools and an army base) and smaller local convenience stores throughout Moorebank, Ingleburn and the Southwest of Sydney generally. Shaun has experienced first-hand the price taking nature of the transport industry as well as truck drivers' lack of bargaining power with major retailers, and the effect this can have on safe driving practices. Shaun provided the following insights.

“

My typical day involves me getting up around midnight, travelling from where I live to pick the truck up from an industrial yard where it is kept overnight (I get there at about 1am), and then heading into the [bread company's Inner-Western Sydney bakery] by about 1.45am. Once there, I will unload the previous days' stale bread and excess crates/dolleys. That will take anywhere between 15 to 20 minutes. The volume and types of bread we are to cart on any given day, to any customer, is communicated to us by [the bread company] through a handheld computer that we have been supplied by [the bread company]. I will unload my truck with the customer orders as per an interim docket obtained from the handheld system, and obtain a print-out of the interim docket so that the orders can be checked by customers.

When I first started doing work for [the bread company], the daily deliveries for the chain stores (such as Woolworths and Coles) were pre-organised onto dollies for loading onto the truck. The smaller jobs I have always had to pick and pack myself.

Over time that arrangement has changed, such that I now have to pick and pack a significantly larger percentage of the daily customer orders. ... I understand from discussions that I had with the company in the course of the annual reviews of [my contract] that the hours estimates ... did not provide for an amount of paid time for the time spent loading and/or unloading returns. ...

Drivers in [the bread company] have taken on significant levels of debt (usually involving mortgages over family homes) or significant long-term lease commitments for a truck ... From my own personal experience, and from my observations and discussions with other drivers, I can say the changes to the way the loading/unloading activities at [the Inner-Western Sydney bakery] have resulted in significantly longer working days than in the past (meaning more than the 75 hours initially estimated).

In order to try and manage the changes to the way the runs have been organised, and the significant reductions in the rates paid for work, to my knowledge drivers are engaging in a series of unsustainable and unsafe practices, including:

Working seven days a week for weeks on end. ...

On any given day, not taking breaks throughout the course of the day ...

Failing to maintain their trucks as they are supposed to be maintained. ...

Moreover, in my view it's just not safe to have a driver behind the wheel of a truck that is stressed out and anxious, or depressed, because their livelihood is under threat because the company presents changes to a contract on a take it or leave it basis. I have no doubt if the contract had a proper costs recovery mechanism in it that [the bread company] couldn't just change when they wanted, the drivers would not need to drive extended hours and would be better able to manage the
”
maintenance on their vehicles.

- 1.5 As noted by the TWU in the course of giving evidence before the Committee at the public hearing on 22 June 2018, it is a travesty that a Bill² which may have gone some little way to address the power imbalance between owner driver bread carters like Shaun and the large companies which engage them was recently voted down by the NSW Government. The Bill would simply have amended the *Industrial Relations Act 1996* (NSW) (**IR Act**) to allow Shaun and his fellow bread carters to have access to the same limited industrial protections their fellow owner drivers across the rest of the transport industry enjoy. Instead, the Government has allowed s 309(4)(d) of the IR Act – an historical anomaly which exempts, for no good reason, bread, milk and cream carters from the ambit of the Act and the independent umpire, the Industrial Relations Commission of NSW – to remain and, in the result, has shamefully greenlighted the continued exploitation of owner drivers like Shaun.

2 Volume of fresh produce moved by trucks

- 2.1 Mr Justin Field asked during proceedings what tonnage of fresh produce was moved by trucks in NSW³.
- 2.2 The TWU reported in its submission to the Inquiry that approximately 23.5 million tonnes of ‘food and beverages’ were transported in the Greater Sydney region in 2016. This figure was taken

² *Industrial Relations Amendment (Contracts of Carriage) Bill 2018.*

³ Transcript, page 62.

from the Government's Draft Freight and Ports Plan and was not limited to road transport but included all transport modes⁴.

- 2.3 The TWU has been unable to ascertain exact figures indicating what tonnage of fresh produce in particular is transported by trucks in NSW. Indeed, it does not appear that any study has been done to measure this particular aspect of the freight task, with the available statistics generally being broken down into broader commodity sub-categories such as 'grains' and 'food'.
- 2.4 However, the figure referred to in the TWU's submission may be somewhat narrowed by reference to findings from the Australian Bureau of Statistics' (**ABS**) 'Road Freight Movements Survey' undertaken in 2014. Relevantly, the Survey found as follows:
- (1) Freight originating from NSW – being some 539 million tonnes - accounted for 25.3 per cent of total tonnes carried by trucks nationally in 2014⁵;
 - (2) Freight destined for NSW but originating from another State – being some 538 million tonnes – accounted for 25.2 per cent of total tonnes carried nationally by trucks in 2014⁶;
 - (3) The total tonnage of freight carried within NSW by truck in 2014 was 502.9 million tonnes⁷;
 - (4) Within the 'food and live animals' commodity group, there were 53,844.4 tonnes of 'food' (defined as including 'food for animal or human consumption') originating from NSW and carried by truck in 2014 (accounting for 539,953.7kms travelled, and 54.8 per cent of the total tonnage carried in the broader 'food and live animals' commodity group)⁸;
 - (5) There were 54,600.1 tonnes of 'food' transported by truck into NSW in 2014 (accounting for 576,335.4kms travelled, and 57.8 per cent of the total tonnage carried in the broader 'food and live animals' commodity group)⁹.
- 2.5 Whilst these statistics do not provide data with respect to fresh food specifically, they do provide some greater specificity than the 23.5 million tonne figure contained in the Government's Draft Freight and Ports Plan.
- 2.6 First, the ABS statistics measure tonnes carried by truck only (as opposed to all modes of transport). Secondly, they narrow the aforementioned 'food and beverages' commodity group down to a 'food' commodity group which, albeit still reasonably broad and including food for both animal and human consumption, nonetheless provides a closer indication of the total tonnage of fresh food than does the broader 'food and beverages' category as it specifically excludes 'cereal grains', 'live animals' and 'beverages and tobacco'.
- 2.7 The statistics reveal that 'food' appeared to account for approximately 10 per cent of total freight tonnes carried within NSW in 2014. It may be inferred that the total amount of fresh food in particular would be something less than that figure.

⁴ <https://future.transport.nsw.gov.au/sites/default/files/media/documents/2018/Draft-NSW-Freight-and-Ports-Plan.pdf>, page 27.

⁵ [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/94CE35246BBB53D0CA257FA8001C0895/\\$File/92230p001_201605.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/94CE35246BBB53D0CA257FA8001C0895/$File/92230p001_201605.pdf)

⁶ Ibid.

⁷ Ibid.

⁸ See Road Freight Movements RSEs for Data Cubes, Australia, excel spreadsheet, available at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/9223.012%20months%20ended%2031%20October%202014?OpenDocument#Data>.

⁹ Ibid.

3 Conclusion

- 3.1 The TWU hopes these answers are of some assistance to the Committee, and again thanks the Committee for the opportunity to contribute to the Inquiry on behalf of its members.

Yours faithfully

Louise de Plater

Legal Officer

Transport Workers' Union of NSW

P

E