



ETU members compensated to the tune of over \$28,000 in enterprise agreement win

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Hall Payne recently represented the Electrical Trades Union (“ETU”) in a dispute related to the interpretation of a clause in the Kentz Pty Ltd Ichthys Onshore Construction Greenfields Agreement (“the Agreement”). The clause related to the payment of licence allowances, in addition to the base hourly rate. The Federal Court found in favour of the ETU and its affected members.

Background

The case related to a dispute about whether the reference of ‘electrical licence’ in the ‘Summary of Allowance’ clause of the Agreement includes any kind of electrical licence or whether it refers only to an *unrestricted* electrical licence.

Hall Payne and ETU contended that the electrical licence allowance under the Agreement, described as ‘qualifications allowances’ reflected the work performed, rather than the individual’s qualification.

Further, the ETU argued that, unlike the Electrical, Electronic and Communications Contracting Award 2010, the Agreement does not differentiate between a ‘restricted’ or ‘unrestricted licence’.

The court agreed.

The decision

In May 2020, the Federal Court found that Kentz Pty Ltd (Kentz) had incorrectly applied its Agreement, contravening section 50 of the *Fair Work Act 2009* (Cth).

The judgment means that the three ETU members affected by the proceedings, who all held a *restricted* electrical worker's licence, are entitled to compensation of **\$28,825.02**.

The Court criticized the contentions made by Kentz, noting that inserting the word 'unrestricted' before the word licence creates confusion rather than clarity as both the *Electrical Workers and Contractors Act 1978* (NT) and the *Electrical Workers and Contractors Regulations 1984* (NT) do not have an 'unrestricted electrical licence' category.

Further, the term does not appear anywhere in the allowance clause and as such:

“one would have expected to see that defined expression used in those words”,

if the term was intended to confine to an *unrestricted* licence.

This decision is a significant win for ETU and its members and serves as a warning against employers seeking to read words into an enterprise agreement.

[You can read the judgment of the Federal Court here.](#)

Penalty imposed upon Kentz

The amount of pecuniary penalty to be imposed upon Kentz for its breaches was decided on 28 July 2020.

In determining the appropriate penalty to be imposed, the Federal Court took into consideration, the joint submissions submitted by the parties, in that:

- general deterrence is an important factor;
- while the conduct of Kentz was deliberate, it did not intend to act unlawfully; and
- only three employees were affected.

Although the Court found that Kentz had no prior contraventions and had co-operated and acted promptly throughout the proceedings, the Court agreed with our submissions that the penalty must be set sufficiently high to deter both Kentz and other employers from engaging in similar behaviour.

The parties jointly proposed to the Court that the pecuniary penalty to be imposed on Kentz should be set at **\$15,000**, to be paid to the ETU.

The Court agreed.

Got concerns about interpretation or implementation of your enterprise agreement?

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Contacting Hall Payne Lawyers

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