

FEDERAL COURT OF AUSTRALIA

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Kentz Pty Ltd [2020] FCA 581

File number: NTD 15 of 2019

Judge: **REEVES J**

Date of judgment: 1 May 2020

Catchwords: **INDUSTRIAL LAW** – application for a declaration that the respondent contravened s 50 of the *Fair Work Act 2009* (Cth) (the Act) and consequent compensation – where the applicant and respondent are parties to a Greenfields agreement made under the Act (the Agreement) – whether certain employees were entitled to prescribed allowances under the Agreement – consideration of proper construction of the terms of the agreement – application granted

Legislation: *Electrical Workers and Contractors Act 1978* (NT)
Electrical Workers and Contractors Regulations 1984 (NT)
Fair Work (Registered Organisations) Act 2009 (Cth)
Fair Work Act 2009 (Cth)

Cases cited: *Workpac Pty Ltd v Skene* (2018) 264 FCR 536; [2018] FCAFC 131

Date of hearing: 3 March 2020

Registry: Northern Territory

Division: Fair Work Division

National Practice Area: Employment & Industrial Relations

Category: Catchwords

Number of paragraphs: 27

Counsel for the Applicant: Mr C Massy

Solicitor for the Applicant: Hall Payne Lawyers

Counsel for the Respondent: Mr M Easton

ORDERS

NTD 15 of 2019

BETWEEN: **COMMUNICATIONS, ELECTRICAL, ELECTRONIC,
ENERGY, INFORMATION, POSTAL, PLUMBING AND
ALLIED SERVICES UNION OF AUSTRALIA**
Applicant

AND: **KENTZ PTY LTD**
Respondent

JUDGE: **REEVES J**

DATE OF ORDER: **1 MAY 2020**

THE COURT ORDERS THAT:

1. The parties are to prepare and submit to Chambers a draft set of orders to reflect these reasons.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

REEVES J:

1 This matter concerns the construction of cl 13.2 of the Kentz Pty Ltd Ichthys Onshore
Construction Greenfields Agreement (the Agreement). The narrow question for determination
is whether the reference to an “Electrical licence” in cl 13.2(a) of the Agreement refers to *any*
kind of electrical licence or whether it refers to an unrestricted electrical licence.

FACTUAL BACKGROUND

2 The key facts in this matter below have been extracted from the Statement of Agreed Facts
filed by the parties.

3 The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied
Services Union of Australia (the CEPU) is a registered organisation under the *Fair Work*
(Registered Organisations) Act 2009 (Cth) and is a registered employee organisation under the
Fair Work Act 2009 (Cth) (the FWA). It represents Mr Luke Brown, Mr Farib Parra Moreno
and Mr Vipul Pathak, the three employees affected by this proceeding.

4 The Ichthys Project (the Project) involved the construction and commissioning of an onshore
liquefied natural gas processing plant at Blaydin Point near Darwin in the Northern Territory.
Kentz Pty Ltd, the respondent company, was engaged in September 2014 to perform electrical
work at the Project.

5 The Agreement is an enterprise agreement made under the FWA. It was approved by the Fair
Work Commission on 22 September 2014. It commenced operation one week later in
accordance with s 54(1) of the FWA. It applied to the employees identified in cl 3 of the
Agreement, which included Mr Brown, Mr Moreno and Mr Pathak mentioned above.

6 The clause of the Agreement at the centre of this matter (cl 13.2) relevantly provides:

13.2 Summary of Allowances

The following allowances are paid, in addition to the Base Hourly Rate set out in
subclause 13.1(a) above, where applicable. For the purposes of this clause the
following applies:

Flat Allowance: Paid as a separate stand alone payment in addition to the Base Hourly
Rate and does not form part of the Base Hourly Rate for the purposes of calculating
overtime penalties or paid leave.

All Purpose Allowance: Added to the Base Hourly Rate and applies on top of the

Base Hourly Rate for the purposes of calculating overtime or paid leave.

- (a) The weekly and/or hourly All Purpose Allowances are set out in the table below:

All Purpose Allowances	Weekly (From 01/11/12) (36 x hourly allowance)	Hourly (From 01/11/12)
Leading Hand (as defined)		
1-9 Employees	\$44.10	\$1.22
10-19 Employees	\$66.12	\$1.83
20 or more Employees	\$88.14	\$2.44
Rigger, Dogger, Scaffolders holding and using licenses issued pursuant to the relevant Act and/or Regulations	\$35.27	\$0.97
Tradesperson tool allowance	\$39.87	\$1.11
Tradesperson allowance	\$81.45	\$2.25
Plumbing and/or Electrical licence	\$52.88	\$1.47
Crane Operation – Lofty or Tower Crane	\$79.29	\$2.20
Mobile Crane		
i) up to 80 tonne	\$17.62	\$0.48
ii) over 80 tonne and up to 120 tonne	\$61.73	\$1.71
iii) over 120 tonne and up to 300 tonne	\$70.48	\$1.96
iv) over 300 tonne and up to 500 tonne	\$79.30	\$2.19
v) over 500 tonne	\$85.97	\$2.38
Qualification payments (Refer to Appendix 1 – Definitions)		
i) Welder Tested*	\$35.27	\$0.97
ii) Welder – Special Class *	\$61.73	\$1.71
iii) Welder – Special Class Exotic Materials *	\$108.02	\$2.99
iv) Instrumentation Tradesperson	\$35.27	\$0.97
v) Instrumentation Tradesperson – Complex Systems	\$61.73	\$1.71
vi) Electrical/Mechanical Tradesperson Special Class	\$61.73	\$1.71
vii) Control Systems Tradesperson **	\$61.73	\$1.71
viii) Instrumentation and Control Tradesperson ***	\$158.62	\$4.40
ix) Electronics Tradesperson ***	\$158.62	\$4.40

* Welding allowances are not cumulative

** The Control Systems Tradesperson Allowance will be paid to all Licensed Electricians

*** The Instrumentation and Control Tradesperson and the Electronic Tradesperson allowances are in lieu of all other electrical allowances except for the electrical licence allowance.

- (b) ...

7 Clause 13.3 of the Agreement is also relevant to the relief the CEPU has sought. It provides as follows:

13.3 Payment of wages

- (a) The pay week will begin each Monday and end on the following Sunday. Remuneration shall be paid weekly, no later than midnight Wednesday of the following week, into major Australian trading banks. Receipt of remuneration into other Australian banks/financial institutions may be one (1) day later.
- (b) Payment shall be by direct deposit/electronic funds transfer to a maximum of two (2) Australian bank accounts that are nominated by the Employee.
- (c) When the Employee's services are terminated, the Employer shall pay any wages due as soon as practicable, and in any case within forty-eight (48) hours after termination, except when a holiday or weekend intervenes.

8 Many of the terms used in the Table in cl 13.2 above (the Table) are, as mentioned therein, defined in Appendix 1 to the Agreement (Appendix 1). While it is lengthy, because it provides important context to cl 13.2, it is appropriate to set it out in full as follows:

(a) Electronics Tradesperson

Electronics Tradesperson means an electrical tradesperson working at a level beyond Electrician Special Class and who is mainly engaged in applying their knowledge and skills to the task of installing, repairing, maintaining, servicing, modifying, commissioning, testing, fault finding and diagnosing of various forms of machinery and equipment which are electronically controlled by complex digital and/or analogue control systems utilising integrated circuitry.

The application of this skill and knowledge would require an overall understanding of the operating principles of the system and equipment on which the tradesperson is required to carry out their tasks.

To be classified as an Electronics Tradesperson a tradesperson must have at least three (3) years on the job experience as a tradesperson in electronic systems utilising integrated circuits and in addition, must have satisfactorily completed a post trades course in electronics equivalent to at least two (2) years part time study.

In addition, to be classified as an Electronics Tradesperson a tradesperson must be required, as part of their duties, to:

- (1) Maintain and repair multi-function printed circuitry of the type described in this definition using circuit diagrams and test equipment;
- (2) Work under minimum supervision and technical guidance;
- (3) Provide technical guidance to other tradespersons or to management within the scope of the work described in this definition; and or,
- (4) Prepare reports of a technical nature on specific tasks or assignments as directed and within the scope of the work described in this definition.

(b) Instrumentation and Controls Tradesperson

An instrument (mechanical or electrical) tradesperson working at a level defined as Instrument Tradesperson Complex Systems and who is mainly engaged in applying skills and knowledge to installing, repairing, maintaining,

servicing, testing, modifying, commissioning, calibrating and fault finding industrial instruments which make up a complex control system which utilises some combination of electrical, mechanical, hydraulic and pneumatic principles and electronic circuitry containing complex analogue and/or digital control systems utilising integrated circuitry.

The application of this skill and knowledge would require an overall understanding of the operating mode or principles of the various types of measurement and control devices on which the tradesperson is required to perform tasks. To be classified as an Instrumentation and Controls Tradesperson, a tradesperson must have at least three (3) years relevant on the job experience as a tradesperson – twelve (12) months of which must be at the level of ‘Instrument Tradesperson – Complex Systems’ and in addition must have satisfactorily completed a related post-trades course equivalent to at least two (2) years part time study.

In addition, to be classified as an Instrumentation and Controls Tradesperson, a tradesperson must be required as part of their duties to:

- (1) Maintain and repair multi-function printed circuitry of the type described in this definition using circuit diagrams and test equipment;
- (2) Work under minimum supervision and technical guidance;
- (3) Provide technical guidance to other Employees or to management within the scope of the work described in this definition; and/or;
- (4) Prepare reports of a technical nature on specific tasks or assignments as directed and within the scope of the work described in this definition.

(c) **Instrument Tradesperson – Complex Systems**

An instrument (mechanical or electrical) tradesperson who is mainly engaged in installing, repairing, maintaining, servicing, testing, modifying, commissioning, calibrating and fault finding instruments which make up a complex control system which utilises some combination of electrical, electronic, mechanical, hydraulic and pneumatic principles, including work on complex digital and/or analogue control systems utilising integrated circuits.

To be classified as an Instrument Tradesperson – Complex Systems, a tradesperson will have:

- (1) had a minimum of two (2) years on the job experience as a tradesperson working predominantly on complex and/or intricate instruments and instrument systems, as will enable them to perform such work under minimum supervision and technical guidance; and
- (2) satisfactorily completed an appropriate post trade course equivalent to at least two (2) years part time study or has achieved to the satisfaction of the employer, a comparable standard of skill and knowledge by other means including in-house training or on the job experience referred to in (1) above.

(d) **Instrument Tradesperson**

A tradesperson mainly engaged in installing, (including the installing of inter connecting instrumentation wiring, not prohibited by law or hydraulic or

pneumatic instrumentation tubing) repairing, maintaining and servicing industrial instruments and control systems, including instruments and systems utilising integrated circuits.

An Instrument Tradesperson will have completed an apprenticeship, the greater part of which involved industrial instrumentation, or alternatively can demonstrate a knowledge and understanding of industrial instrumentation and can apply that knowledge and understanding to a level which would have been gained by undertaking a formal training course run by a State Education Department or Technical Education Department or its equivalent or by at least twelve (12) months on the job experience as a tradesperson performing instrument work.

(e) **Electrical Tradesperson – Special Class**

An electrical fitter or electrical mechanic, who is mainly engaged on complex and/or intricate circuitry, the performance of which work requires the use of ‘additional knowledge’ as defined.

For the purpose of this definition ‘additional knowledge’ means knowledge in excess of that gained by the satisfactory completion of the appropriate technical college trade course which has been acquired by the tradesperson by virtue of their:

- (1) having had not less than two (2) years on the job experience as a tradesperson working mainly in such complex and/or intricate circuitry as will enable them to perform such work unsupervised where necessary and practicable; and
- (2) having, by virtue of either the satisfactory completion of a prescribed post-trade course in industrial electronics or the achievement of a comparable standard of knowledge by other means including the on the job experience referred to in provision (a) hereof, gained a sufficient comprehension of such complex or intricate circuitry work as will enable the tradesperson to examine, diagnose and modify systems comprising inter-connected circuits.
- (3) For the purpose of this definition the following courses are deemed to be prescribed post-trade courses in industrial electronics:
 - (i) Industrial Electronics (Course ‘C’) of the Department of Education, Queensland;
 - (ii) Post Trade Industrial Electronics Course of the NSW Department of Technical Education;
 - (iii) The Industrial Electronics Course (Grades 1 & 2) approved by the Education Department of Victoria;
 - (iv) The Industrial Electronics Course of the South Australian School of Electrical Technology;
 - (v) The Industrial Electronics Course of the Technical Education Department of Tasmania;
 - (vi) The Certificate in Industrial Electronics of the Technical Education Division of the Western Australian Educational Department.

(f) **Controls Systems Tradesperson**

An electrical tradesperson mainly engaged in installing, terminating, testing, modifying, commissioning or fault finding control circuitry which utilises electrical or electronic principles, and interpreting electrical drawings which include control circuitry.

An Employee at this level would work under minimum supervision and technical guidance.

(g) **Electrical Mechanic – Certified**

A tradesperson who is required to hold an Electrical Mechanics Certificate issued by the Electrical Workers' and Contractors' Board, or its equivalent, as a result of additional responsibilities assumed for testing and connecting their own work.

The additional skills payment shall not apply in whole or in part, until that person completes an apprenticeship or other equivalent training course.

Controls Systems:

An electrical tradesperson mainly engaged in installing, terminating, testing, modifying, commissioning or fault finding control circuitry which utilises electrical or electronic principles, and interpreting electrical drawings which include control circuitry. An Employee at this level would work under minimum supervision and technical guidance.

(h) **Mechanical Tradesperson – Special Class**

A Mechanical Tradesperson who is mainly engaged in any combination of installing, repairing and maintaining, testing, modifying, commissioning or fault finding on complex machinery and equipment and who, in the course of such work, is required to read and understand complex plans and drawings, the performance of which work requires the use of additional knowledge as herein defined.

For the purpose of this definition 'additional knowledge' means knowledge in excess of that gained by the satisfactory completion of the appropriate technical college trade course which has been acquired by the tradesperson by virtue of their:

- (1) Having had a minimum of two (2) years on the job experience as a tradesperson working under minimum supervision and technical guidance; or
- (2) Having satisfactorily completed a prescribed post trades course or the achievement to the satisfaction of the employer of a comparable standard of skill and knowledge by other means including in-plant training or on the job experience referred to in (1) above.

For the purpose of this definition 'mainly engaged' means regularly over a period or intermittently during a week.

(i) **Welder – Special Class**

An Engineering Tradesperson (Fabrication):

- (1) Who is qualified, through passing the tests required (pre-employment

and/or during employment on the respective Project), to weld to the satisfaction of the relevant regulatory authority to the requirements of the relevant Certificates 1-9 AS 1796, or welding standards of equivalent or greater testing integrity and who is engaged on work requiring such qualification; or

- (2) Who is qualified to the relevant regulatory standard and is required to perform pressure vessel welding or pipe welding.

Welder Special Class – Exotic Materials

- (1) An Employee, who is qualified, through passing the tests required by the employer, and remains so qualified, and is engaged on work requiring such qualification in relation to welding either alloy pipework to ASME-B31-3 standard, or pressure vessels and tanks to the relevant standards, in relation to the following materials:

- (i) Stainless Steel (304, 310, 316 and 904 grade)
- (ii) Aluminium
- (iii) Chrome Molybdenum
- (iv) Nine per cent (9%) Ni Steel
- (v) A333 Grade 6

Such tests may be required prior to employment and during employment, on the Project, to ensure that qualifications are relevant and up to date.

This allowance only applies to Employees whose welds are recorded Non Destructive Tested (NDT) for the time so worked.

(j) **Tested Welder**

An Engineering Tradesperson (Fabrication) who, because of the requirements of the manufacturer of the workplace, has met and remains capable of meeting a practical test, e.g. the relevant regulatory requirements for AS 1554SP. Some or all of these welds may be NDT treated.

(k) **Indentured Tradesperson**

A tradesperson who is able to establish to the satisfaction of their employer that they have completed an apprenticeship in the trade they are employed for, either by Trade Certificate or certification by industry assessment to a standard that meets recognised Tradesman qualifications or requisite skill and experience levels for that specific trade.

(l) **Unindentured Tradesperson**

An Employee who may have worked in the industry in a tradesman environment, undertaking skills similar to a tradesman, but who does not have Trade Papers or recognised qualifications.

(m) **Dual and Advanced Ticketed**

An Employee defined as Dual and Advanced Ticketed is licensed for and certified at a Project level and must be willing to use the following qualification/skills when required:

- (1) both advanced scaffolding and advanced rigging;
- (2) Mobile Crane Operator – over 80 tonne and advanced scaffolding; and/or
- (3) Mobile Crane Operator – over 80 tonne and advanced rigging.

An Employee ticketed for two (2) or more of the above qualifications who can demonstrate a minimum of two (2) years experience in each of these classifications, and must be willing to use the qualification/skills when required, will be classified as a Dual and Advanced Ticket.

(n) **Labourer**

Bricklayer's labourer, plasters' labourer, labourer assisting any other tradesperson or assisting any of the above, demolition work (after three (3) months experience), gear hand, jackhammer man, mixer driver (concrete), steel erector, aluminium alloy structural erectors (whether prefabricated or otherwise), gantry hand, crane chaser, cement gun operator, concrete gang including concrete floater, roof layer (malthoid or similar material) dump cart operator, underpinner, concrete form work stripper, driver of motor vehicle having a carrying capacity of under 1.27 tonne. Operator of hand held power or compressed air driven tools. Operator of, or performing duties on, a workboat or barge. The work activities of a 'peggy' include on-Site cleaning, labouring and other duties as required by the Employer.

(o) **Entry Level**

Entry Level is defined as an Employee who has less than three (3) months construction work experience. Following the three (3) month period the Employee will automatically be employed in the appropriate Group level applicable to that skill following formal assessment to determine skill or attain appropriate tickets/licences to align with the Group level.

9 The three employees affected by this proceeding were employed by Kentz on the Project during the following periods:

- (a) Mr Brown between 14 January 2016 and 31 August 2019;
- (b) Mr Moreno between 23 June 2016 and 27 March 2018; and
- (c) Mr Pathak between 17 August 2016 and 2 July 2018.

10 Each of these employees was engaged by Kentz as an "Instrument Tradesperson – Complex Systems" (as defined in [8(c)] above) and each was covered by the Agreement. Furthermore, at all material times, each of them held a restricted electrical worker's licence issued by the Northern Territory Electrical Workers and Contractors Licencing Board. It should be noted that another employee, Mr Richard Stedall, is also referred to in the statement of claim; however, he has since been removed from any involvement in this proceeding.

11 The parties have agreed that, if Kentz is determined to be liable to pay the allowance to these three employees, they will be entitled to receive:

- (a) Mr Brown – \$13,106.14;
- (b) Mr Moreno – \$10,679.55; and
- (c) Mr Pathak – \$5,039.33.

12 Mr Malcolm Nichols is employed by Kentz as its “Projects Director, Asia Pacific”. He made an affidavit in this proceeding in which he described the procedures used to issue unrestricted and restricted electrical licences in the Northern Territory and elsewhere in Australia.

13 In that affidavit, Mr Nichols deposed to having held and maintained an unrestricted electrical worker’s licence in various States and Territories for the past 28 years. Since 2011, he has been an electrical nominee for Kentz’s electrical contractor’s licence. This role required him to, amongst other things, certify to the Northern Territory regulator that electrical workers working for Kentz on the Project who held restricted licences only performed the work they were endorsed to perform.

14 Mr Nichols said that there were significant differences between the responsibilities and duties of those electrical workers who held a restricted licence and those who held an unrestricted licence. He said that various terms are used across Australia to describe an unrestricted electrical licence. In the Northern Territory, the term “electrical mechanic licence” is used as an individual must be qualified as an electrical mechanic before they can perform any type of electrical installation work. Accordingly, he said that an unrestricted electrical licence is described under the applicable Northern Territory legislation as an “electrical worker’s licence endorsed as electrical mechanic grade A”. He claimed that this is the only licence which entitles its holder to carry out any type of electrical installation work in the Northern Territory.

15 He said that, by comparison, a restricted electrical worker’s licence entitles its holder to carry out low voltage electrical work only in relation to equipment that is connected to a fixed electrical installation associated with the holder’s primary occupation. He said that, with a restricted electrical licence, the letter “R” is printed before the licence number and the licence contains a specific endorsement for the category of work which the individual is licensed to perform, for example, “Instrumentation and Control Equipment”. Thus, he claimed, a restricted electrical licence holder is prohibited from performing any work beyond the endorsement on their licence.

THE CONTENTIONS

- 16 Both parties accepted that the principles bearing on the proper construction of an enterprise agreement are well settled, citing *Workpac Pty Ltd v Skene* (2018) 264 FCR 536; [2018] FCAFC 131 at [197] where the Full Court held:

The starting point for interpretation of an enterprise agreement is the ordinary meaning of the words, read as a whole and in context: *City of Wanneroo v Holmes* (1989) 30 IR 362 at 378 (French J). The interpretation "... turns on the language of the particular agreement, understood in the light of its industrial context and purpose ...": *Amcors Limited v Construction, Forestry, Mining and Energy Union* (2005) 222 CLR 241 at [2] (Gleeson CJ and McHugh J). The words are not to be interpreted in a vacuum divorced from industrial realities (*Holmes* at 378); rather, industrial agreements are made for various industries in the light of the customs and working conditions of each, and they are frequently couched in terms intelligible to the parties but without the careful attention to form and draftsmanship that one expects to find in an Act of Parliament (*Holmes* at 378-9, citing *Geo A Bond & Co Ltd (in liq) v McKenzie* [1929] AR(NSW) 498 at 503 (Street J)). To similar effect, it has been said that the framers of such documents were likely of a "practical bent of mind" and may well have been more concerned with expressing an intention in a way likely to be understood in the relevant industry rather than with legal niceties and jargon, so that a purposive approach to interpretation is appropriate and a narrow or pedantic approach is misplaced: see *Kucks v CSR Limited* (1996) 66 IR 182 at 184 (Madgwick J); *Shop Distributive and Allied Employees' Association v Woolworths SA Pty Ltd* [2011] FCAFC 67 at [16] (Marshall, Tracey and Flick JJ); *Amcors* at [96] (Kirby J).

(Emphasis removed)

However, the parties differed on the relevant industrial context affecting the construction of the Agreement.

- 17 The CEPU pointed to a number of aspects of that context in support of its claim that Kentz was required to pay the additional allowance to the three employees involved. First, the electrical licence allowance provided for an additional payment to be made to licenced employees in recognition that those persons should receive a higher pay than tradespeople who are not required to be licenced. Further, the additional allowances described as "Qualifications allowances" are reflective of work performed, rather than the individual's qualification. The CEPU claimed that this supported its contention that the allowances payable are differentiated according to work performed. In contrast with the Electrical, Electronic and Communications Contracting Award 2010, the CEPU contended that the words used in cl 13.2 do not differentiate between a restricted or unrestricted licence. In circumstances where a restricted licence is still an electrical licence which enables the holder to perform electrical work that an unlicensed person cannot perform, the CEPU contended that the holder of a restricted licence is entitled to the allowance.

18 In response, Kentz contended that, on its proper construction, the expression “Electrical licence” in the Table refers to an electrical tradesperson holding an unrestricted Electrical Mechanic Grade A licence. It contended that the Agreement must be interpreted according to its industrial context, which includes the varying degrees of duty and responsibility assigned to electricians on the Project, as outlined in the affidavit of Mr Nichols above. Accordingly, Kentz contended that the expression “Electrical licence” should be read as referring to the term “Electrical Mechanic – Certified” as defined in Appendix 1 of the Agreement which provides:

A tradesperson who is required to hold an Electrical Mechanics Certificate issued by the Electrical Workers’ and Contractors’ Board, or its equivalent, **as a result of additional responsibilities assumed for testing and connecting their own work.**

...

(Emphasis added)

This construction is appropriate, it contended, because it provides a monetary distinction between electrical workers reflective of the additional duties required of those workers.

CONSIDERATION

19 The meaning of the words “Plumbing and/or Electrical licence” in row 5 of the Table is quite clear from their text. They refer generally to the two types of licence described, namely a plumbing licence and an electrical licence. They do not, on their face, refer to a particular category of one of those two types of licences, much less to a particular category of electrical licences, namely an unrestricted electrical licence, as claimed by Kentz. There is, therefore, no justification for reading into those words the word “unrestricted” before the word “Electrical”.

20 In my view, this clarity of meaning is removed, rather than improved, by the contextual arguments advanced by Kentz. In the first place, the Northern Territory legislation – the *Electrical Workers and Contractors Act 1978* (NT) and the *Electrical Workers and Contractors Regulations 1984* (NT) – does not have a category of licence described as an “unrestricted electrical licence”. Instead, it is common ground that the equivalent licence in that legislation is the licence described in reg 5 of the Regulations as an “Electrical worker’s licence endorsed as electrical mechanic grade A”. Confusion, rather than clarity, would therefore be created by reading, or inserting, the word “unrestricted” before the word “licence”, as Kentz contended.

21 Secondly, as Kentz pointed out in its submissions, the licence described in reg 5 above corresponds generally to an “Electrical Mechanic – Certified” as defined in cl (g) of Appendix 1 (see at [8] above), albeit that that definition does not use the word “licence”. That being so,

if the words “Electrical licence” in row 5 of the Table were intended to be confined to such a licence, one would have expected to see that defined expression used in those words. The fact it is not also stands against Kentz’s contextual argument.

22 Thirdly, and relatedly, it is significant that the defined expression above does not appear anywhere in the Table, thus indicating that the holding of such an unrestricted licence is not relevant to the allowances provided for in cl 13.2.

23 Fourthly, and further to the above, the other allowances in the Table that are dependent on the employee concerned holding a licence, namely a rigger, a dogger, a scaffolder, contain the additional requirement that the employee concerned is “using” that licence (see row 2 in the Table above). This distinction therefore tends to indicate that merely holding a plumbing and/or electrical licence is sufficient for the purposes of the allowance provided for in row 5. Furthermore, the references to these other three types of licence in the Table compound the difficulty associated with reading the word “unrestricted” before the word “electrical” in row 5 as mentioned at [19] above.

24 Fifthly and finally, the following notes appearing after the Table, and which correspond to the asterisks within it, provide further contextual features which stand against Kentz’s contentions:

- * Welding allowances are not cumulative
- ** The Control Systems Tradesperson Allowance will be paid to all Licensed Electricians
- *** The Instrumentation and Control Tradesperson and the Electronic Tradesperson allowances are in lieu of all other electrical allowances except for the electrical licence allowance.

25 The first of these asterisked notes serves to clarify that the three welding allowances in i), ii) and iii) of row 8 are not cumulative. This is important because, subject to the qualification provided for by the third asterisked note, which is addressed below, the absence of a similar provision with respect to the remaining tradesperson’s allowances described in row 8 suggests, by implication, that no such restriction applies to them. Turning then to the second asterisked note, it provides that the allowance described in cl vii) of row 8, namely “The Control Systems Tradesperson Allowance” is to be paid to “all Licensed Electricians” (emphasis added). This is important because the only other similar expression in cl 13.2, or in the Table, or in Appendix 1, is that in row 5: “...Electrical licence”. In context, therefore, the words “all licensed Electricians” must be intended to refer to those employees who hold an electrical licence. Finally, the third asterisked note provides that the allowances in cl viii) and ix) of row 8 are in

lieu of, that is not cumulative to, “all other electrical allowances except for the electrical licence allowance”. Having regard to the terms of the second asterisked note above, and the identical terminology used, the latter words must also be taken to refer to the allowance provided for in row 5. Since the only other allowances provided for are those in row 8 of the Table, the former words must therefore be taken to refer to those allowances.

26 Accordingly, when the content and structure of all these provisions in cl 13.2 and the Table are read in their proper context, I consider the CEPU is correct in its contentions that they operate as follows. First, as each of the three employees mentioned above was an “Instrument Tradesperson – Complex Systems”, they are entitled to the allowance provided for in cl v) of row 8. In addition, because they each held an electrical licence, albeit unrestricted, they are entitled to the electrical licence allowance provided for in row 5.

27 For these reasons, I consider the CEPU is correct in its construction of the apposite provisions of the Table at cl 13.2 of the Agreement. It follows that it is entitled to the declaration it has sought and the three employees involved are entitled to be paid by way of compensation the agreed amounts (see at [11] above). I will hear further from the parties on the form of these orders and on the question as to what pecuniary penalties should be imposed on Kentz.

I certify that the preceding twenty-seven (27) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Reeves.

Associate:



Dated: 1 May 2020