



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Ross Alexander Family Trust T/A Drilltec
(AG2019/48)

DRILLTEC PTY LTD EXPLORATION DRILLING EMPLOYEE COLLECTIVE AGREEMENT 2018 - 2021

Miscellaneous

COMMISSIONER LEE

MELBOURNE, 23 APRIL 2019

Application for approval of the Dirilltec Pty Ltd Exploration Drilling Employee Collective Agreement 2018-2021.

[1] An application has been made for approval of an enterprise agreement known as the *Dirilltec Pty Ltd Exploration Drilling Employee Collective Agreement 2018-2021* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Ross Alexander Family Trust T/A Drilltec. The Agreement is a single enterprise agreement.

[2] The matter was listed for hearing by telephone before me on 23 April 2019. Mr Ross Alexander appeared on behalf of the Applicant.

[3] I note that the employer's statutory declaration in support of the application for approval of an enterprise agreement (F17) indicates that employees were notified of the details of the vote at a meeting held on 11 December 2018. At the hearing, the Applicant confirmed that all employees were present at this meeting where they were notified of the time, place and method of the vote. I note that the vote commenced less than seven clear days later, on 18 December 2018. Also relevant is the fact that the F17 states that all 11 employees that will be covered by the Agreement cast a valid vote to approve the Agreement. In *Construction, Forestry, Maritime, Mining and Energy Union and Ors v CBI Constructors Pty Ltd*,ⁱ the Full Bench confirmed that an employer must take all reasonable steps to notify relevant employees of the time, place and method of the vote at least seven clear days before the commencement of the vote, pursuant to s.180 (3) of the Act. Although it does not appear that employees were notified of the time, place and method of the vote seven clear days before the commencement of the vote, I refer to s.188 (2) of the Act and am satisfied that this error constitutes a minor procedural error, and that employees covered by this Agreement are not likely to be disadvantaged as a result of the error.ⁱⁱ

[4] Further, I note that Notice of employee representational rights has been signed by the Managing Director of the Applicant. This is content that is not prescribed by the *Fair Work*

Regulations 2009 and therefore contravenes s.174 (1A) of the Act. However, I refer to s.188 (2) of the Act and am satisfied that this error constitutes a minor technical error, and that employees covered by this Agreement are not likely to be disadvantaged as a result of the error.ⁱⁱⁱ

[5] I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met.

[6] Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[7] I observe that the following provisions are likely to be inconsistent with the National Employment Standards (NES):

- Clause 18 – Annual leave
- Clause 27 – Abandonment of employment
- Clause 32 – Public Holidays

However, noting clause 6 (a) of the Agreement, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[8] The Agreement lodged contained an error at clause 7(d). On 9 April 2019, the Applicant filed an amended page of the Agreement pursuant to s.586 of the Act. I am satisfied that the correction should be made and that it is appropriate to do so pursuant to s.586 of the Act.

[9] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 30 April 2019. The nominal expiry date of the Agreement is 30 November 2021.



COMMISSIONER

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ⁱ [2018] FWCFB 2732.

ⁱⁱ Huntsman Chemical Company Australia Pty Limited T/A RMAX Rigid Cellular Plastics & Others [2019] FWCFB 318.

ⁱⁱⁱ Ibid.