DECISION

Fair Work Act 2009
s.604 - Appeal of decisions

Airservices Australia

v

Mr Luke Crouch
(C2022/6245)

DEPUTY PRESIDENT GOSTENCNIK
DEPUTY PRESIDENT MILLHOUSE
COMMISSIONER SIMPSON

MELBOURNE, 13 FEBRUARY 2023

Appeal against decision [2022] FWC 2171 of Commissioner Wilson at Melbourne on 22 August 2022 in matter number C2021/6964

[1] The appellant, Airservices Australia (Airservices) is a body corporate established under s 7 of the *Air Services Act 1995* (Cth). It provides a range of services to the aviation industry, including telecommunications, aeronautical data, navigation services, air traffic and terminal control, and aviation rescue firefighting, and has a monopoly over the provision of air traffic control services within Australia's airspace. A civilian Air Traffic Controller may only work in Australia for Airservices. Airservices is also a Registered Training Organisation and provides both theoretical and practical training to trainees.

[2] The respondent, Mr Luke Crouch commenced employment with Airservices as an air traffic control trainee on 11 November 2019. In that employment the *Airservices Australia (Air Traffic Control and Supporting Air Traffic Services) Enterprise Agreement 2020-2023* (Agreement) applies to Mr Crouch, under which he is classified as an "Ab Initio Trainee".[1]

[3] The training is for 13 to 15 months and, when successfully completed, qualifies the trainee with a Diploma of Aviation (Air Traffic Control), following which there would be an assignment to field location training for approximately four months. At all times relevant to Mr Crouch, training as an Air Traffic Controller required study for, and completion of, five phases of theoretical and practical training comprising 23 modules. The Civil Aviation Safety Authority (CASA) requires trainees to achieve a minimum score of 70% on all theoretical assessments, subject only to the discretionary provision of a supplementary assessment if the trainee initially fails to attain this mark.[2] A trainee is required to successfully complete each phase of training to progress to the next phase.[3]

[4] Mr Crouch began Phase 1 of his training in November 2019 and continued this phase of training until 10 March 2020. During this phase, Mr Crouch failed two units with scores of 67.6% and 66%. He passed supplementary examinations, achieving 70% and 90%. Phase 2 of Mr Crouch's training commenced on 11 March 2020. In late June and early July of 2020, Mr Crouch was absent for two weeks of work because he was self-isolating for COVID-19,

returning on 13 July 2020. On 22 July 2020, Mr Crouch sat a theoretical examination for the ASA 119 Separation Standards module, which teaches air traffic control trainees how to keep aircraft vertically or horizontally separated in airspace.[4] Airservices contended that passing the theoretical examination for the ASA 119 Separation Standards module was an essential component of the training curriculum, however Commissioner Wilson concluded in the proceeding discussed further below that, while it was likely to be so, there was an insufficiency of evidence.[5] Mr Crouch failed this module, achieving only 45.9%, against the required pass mark of 70%. He sat a supplementary examination for the module on 14 August 2020, but he again failed achieving a score of 68.7%. Mr Crouch was placed on "training review" and instructed not to return to work. In February 2021, Airservices formed the view that Mr Crouch's training should be terminated and informed him of this recommendation.

[5] Mr Crouch raised a dispute with Airservices, and he applied under s 739 of the *Fair Work Act 2009* (Act) for the Commission to deal with the dispute. The application was allocated to Commissioner Wilson. In substance Mr Crouch alleged that Airservices had contravened clause 50 of the Agreement – titled "Performance, Conduct, Termination of Employment" – in various ways.

[6] Airservices and Mr Crouch could not agree on the formulation of questions requiring determination for the purposes of arbitrating the dispute. Ultimately the Commissioner identified the following questions requiring determination:

1. Has Airservices Australia complied with Clause 50 of the 2020 Agreement?

2. If not, should Mr Crouch be re-coursed and/or provided with other remedial training in accordance with Clause 50 of the 2020 Agreement to ensure that provision is complied with by Airservices?[6]

[7] The Commissioner answered "no" to the first question concluding that Airservices had failed to comply with clauses 50.1, 50.2 and 50.3 of the Agreement.[7] As to the second question, the Commissioner concluded that Airservices should provide a further training opportunity to Mr Crouch because termination of his training would, in the context of the evidence, be an outcome that is disproportionate to all the circumstances.[8] Accordingly, the Commissioner determined that Mr Crouch should be re-coursed as an Ab Initio Trainee into the next cohort of air traffic controller trainees to start training and, while awaiting that step, be immediately returned to training and/or other useful and meaningful work.[9]

[8] By its notice of appeal dated 12 September 2022, Airservices appeals the Commissioner's decision. It is not in contest, and we accept that, properly construed, the Agreement confers on parties to a dispute determined by arbitration under the dispute settlement term in clause 10 a right to appeal the decision. Permission to appeal is therefore not required.

The Commissioner's decision

[9] After setting out some introductory and background matters at [1]-[21] of the decision, the Commissioner set about at [22]-[26] resolving some differences about the questions for determination in order to resolve the dispute by arbitration. The ultimate questions on which the Commissioner settled are set out above at [6].

[10] In determining the first question, the Commissioner was required to deal with two contentions raised by Airservices relating to the application of clause 50 to Mr Crouch. First, that clause 4 of Schedule 1 of the Agreement (which provides that Airservices may terminate the employment of an Ab Initio if that Ab Initio fails to satisfactorily complete an essential component of their training) was inconsistent with clause 50 and so was excluded to the extent of the inconsistency. Second, that clause 50 did not apply to an Ab Initio Trainee and so did not apply to Mr Crouch.

[11] As to the first contention, the Commissioner decided at [69] that there was "no inconsistency between Clause 50 and any part of Schedule 1, including Clause 4". The Commissioner reasoned that:

- Clause 2 of Schedule 1 is to be readily understood as providing that when the schedule provides for a matter, then a provision on the same subject elsewhere in the Agreement has no operative effect (at [57]);

- Clause 4 of Schedule 1:

    - clarifies the rights of the parties in respect of an Ab Initio Trainee who may have their employment terminated if they fail to satisfactorily complete an essential component of their training (at [60]). As such, it gives permission to Airservices for termination of employment for the reason of the specified failure (at [61]);

    - invests Airservices with a discretion to terminate the employment of an Ab Initio who has failed to satisfactorily complete an essential component of training (at [61], [69]);

- Schedule 1 and its interaction with the remainder of the Agreement turns to be decided on the ordinary meaning of the relevant words (at [65]):

    - The possibility that "Airservices may terminate the employment of an Ab Initio" is expressed as being contingent on the employee failing to satisfactorily complete an essential component of their training (at [66]);

    - By providing that "Airservices may terminate the employment" of such an employee Schedule 1 clarifies the person's employment is not ongoing or indefinite in the way that may be the case for other people employed under the Agreement and that termination may be for reason of failure of an essential component of training in addition to such other termination rights as may exist (at [66]);

    - Clause 18 (Categories of Employment) draws a distinction between probationary employment, permanent full-time employment, permanent part-time employment, casual employment and fixed term employment and provides that probationary employment is for a period of three months or such "longer period which is expressly stated to be associated

with the successful completion of a formal period of training according to a formal assessment mechanism)" (at [67]);

- Crouch's offer of employment states that his "ongoing employment with Airservices is subject to the successful completion of a qualifying period (which includes a six (6) month probation period). The qualifying period extends for the duration of the Diploma and Field Location training periods and ends on the date you successfully complete your Field Location training and you are issued with an initial Air Traffic Control Rating and licence" (at [67]);

- The contractual provision did not determine the meaning of Clause 18 (at [67]);

- In proper context the provisions of Clause 18 reinforce there is a clarification given by Clause 4 of Schedule 1 – notwithstanding the employment category of an Ab Initio, Airservices "may terminate" their employment if they fail "to satisfactorily complete an essential component of their training" (at [68]).

[12] As to the second contention, the Commissioner decided at [78] that clause 50 applied to Mr Crouch and that Airservices is required to comply with its terms in decisions about him.

[13] The Commissioner thereafter determined at [226]-[228] that Airservices had not complied with clause 50 of the Agreement.

[14] Given that conclusion, it was necessary for the Commissioner to consider and answer the second question, which he did at [229]-[242] and he concluded that "Mr Crouch should be re-coursed as an Ab Initio Trainee into the next cohort of air traffic controller trainees to start training, and while awaiting that step, to be immediately returned to training and/or other useful and meaningful work".[10]

Consideration

Appeal grounds

[15] Three appeal grounds contending error are advanced by Airservices and may be summarised as follows. First, that the Commissioner erred in finding that there was no inconsistency within the meaning of clause 2 of Schedule 1 of the Agreement as between clause 4 of Schedule 1 and clause 50. Second, and in the alternative, the Commissioner erred in finding that clause 50 of the Agreement applied to Mr Crouch as an Ab Initio Trainee. Third, the Commissioner erred as to the relief granted, because it was beyond the scope of the arbitral power conferred on the Commission by the parties pursuant to clause 10 of the Agreement and so was inconsistent with the Agreement and beyond power by reason of s 739(5) of the Act.

[16] For reasons which will become apparent shortly, we need only deal with the first appeal ground.

Ground 1

[17] It is uncontroversial that whether there is error as contended by Airservices in ground 1 of its notice of appeal is to be determined by the correctness standard. Ground 1 concerns the proper construction of various provisions of the Agreement. The Commissioner's construction of those provisions was either correct or it was not. Before the Commissioner, Mr Crouch and Airservices made separate submissions about the character of the dispute, and the appropriate questions for determination.[11] As we earlier noted, the Commissioner decided that the first question for determination was whether Airservices "complied with Clause 50 of the 2020 Agreement".[12] In turn, the determination of that question required a consideration of a preliminary issue – whether clause 50 was excluded by clause 2 of Schedule 1, given that Mr Crouch was an "Ab Initio Trainee" to whom Schedule 1 applied. Relevantly, the Commissioner was called on to determine whether there was an inconsistency between clause 50 of the Agreement and clause 4 of Schedule 1 such that it operated to the exclusion of clause 50. The Commissioner determined there was no inconsistency.[13]

[18] It is not uncommon for enterprise agreements to provide for a hierarchy of provisions rendering some provisions lower in the hierarchy to be of no effect if inconsistent with other identified provisions higher in the hierarchy. Most commonly this is employed to distinguish express terms of an agreement with terms in materials incorporated by reference by assigning precedence to the express terms in the event of, or to the extent of, any inconsistency with an incorporated term. Sometimes, this device is employed to give precedence to one part of an agreement compared to another part. Such is the case here.

[19] Inconsistency between provisions of an enterprise agreement may be identified in several ways. A provision of an agreement may be directly inconsistent with another provision, for example where there cannot be compliance with both or where a right or benefit is conferred by one provision which the other would take away. Provisions of an enterprise agreement may be inconsistent because, for example, one provision has the effect of altering, impairing or detracting from another or other provisions of the agreement in a way that would create a burden that amounts to inconsistency. Provisions may be inconsistent if one operates in a way that is repugnant to another. Indirect inconsistency might arise when a provision of an agreement so comprehensively deals with a subject matter that on its proper construction it leaves no room for the operation of other provisions touching the subject matter. In this sense, the first mentioned agreement provision is said to "cover the field" in relation to the subject matter.

[20] In short compass, Airservices contends that on a proper construction of the relevant provisions there is an inconsistency within the meaning of clause 2 of Schedule 1 between clause 50 of the Agreement and clause 4 of Schedule 1, and therefore the operation of clause 50 is excluded by clause 2 of the schedule. It contends that any provision in the Agreement which operates to fetter the exercise of the discretionary power to terminate the employment of an Ab Initio Trainee in clause 4 of Schedule 1 is inconsistent with the schedule and so is excluded. It says that clause 50 is such a provision.[14]

[21] Mr Crouch contends to the contrary. He says clause 2 of Schedule 1 establishes a conditional hierarchy – if there is an objective, identifiable inconsistency between the words of the Agreement and Schedule 1, then Schedule 1 prevails – but there is in fact no inconsistency between Schedule 1 and any other substantive part of the Agreement. Mr Crouch contends that

clause 4 does not confer an unfettered discretion on Airservices to terminate the employment of an Ab Initio Trainee in the identified circumstances and that properly construed, when examining the Agreement as a whole, and taking into account a purposive approach, termination of all employees including an Ab Initio Trainee is intended to be subject to the detailed and prescriptive processes outlined at clause 50. Clause 4 of Schedule 1 simply identifies that a failure "to satisfactorily complete an essential component" of training is a sufficient trigger allowing Airservices to invoke its poor performance and conduct procedures outlined at clause 50.

[22] For the reasons which follow, we consider that clause 50 of the Agreement is inconsistent with clause 4 of Schedule 1 and by operation of clause 2 of Schedule 1 is excluded. Clause 4 of Schedule 1 operates according to its terms and is unaffected by clause 50 in relation to a decision by Airservices to terminate the employment of an Ab Initio Trainee in the circumstance described in clause 4.

[23] Clause 2 of Schedule 1 contemplates inconsistency between the schedule and other parts of the Agreement. Schedule 1, which is titled "SCHEDULE 1 – AB INITIOS", is of limited scope containing only four clauses. Clause 1 is definitional containing a definition of an "Ab Initio". Mr Crouch is an "Ab Initio" within the meaning of clause 1. Relevantly, an Ab Initio is an employee who "is undergoing training provided by Airservices with the aim of becoming a licensed air traffic controller."

[24] Clause 2 of Schedule 1 sets out the application of the schedule and how it relates to other parts of the Agreement – it applies to Ab Initios only and to the extent of any inconsistency, the schedule applies to the exclusion of other parts of the Agreement.

[25] Clause 3 of Schedule 1 deals with personal/carer's leave providing that clause 37 of the Agreement does not apply to "Ab Initios". Clause 37 provides for various forms of leave, including personal, sick and carer's leave for Air Traffic Controllers. Clause 3 makes clear that Ab Initios accrue personal/carer's leave pursuant to clause 38 of the Agreement, which deals with such leave for employees other than Air Traffic Controllers. It is difficult to identify any work that the inconsistency provision in clause 2 has to do *vis-à-vis* clause 3. The operative effect of the inconsistency provision of clause 2 seems most likely to be directed to the operation of clause 4 and other parts of the Agreement. The existence of the inconsistency provision in a schedule of very limited operative effect is an important contextual consideration in determining the meaning and operative effect of clause 4, and thus whether there is "any inconsistency" with other parts of the Agreement within the meaning of clause 2.

[26] Moreover, on the Commissioner's construction and that for which Mr Crouch advocates, the second sentence of clause 2 of Schedule 1 has no work to do. Clause 1 could not give rise to an inconsistency since it is definitional, does not create any substantive right or obligations and there is no other provision in the Agreement which defines an Ab Initio. The first sentence of clause 2 is an application clause limiting the application of the schedule to "Ab Initios only." Clause 3 makes clear that one provision of the Agreement (clause 37) does not apply in respect of the subject matter of personal/carer's leave while another does (clause 38). As we have already noted it is difficult to identify any basis on which clause 3 could be inconsistent with other parts of the Agreement. It is in substance a provision for the avoidance of doubt. If clause 4 is construed as permissive only, and serving only to clarify the rights of

the parties in respect of an Ab Initio but is otherwise subject to the procedure in clause 50 – one asks rhetorically, with which part of the Agreement might clause 4 of Schedule 1 be inconsistent? The answer is, of course, none. It is accepted that an inconsistency provision in an enterprise agreement is a precautionary determiner of hierarchy as between various identified provisions and may not be an indicator that inconsistency exists, but where the range of provisions given priority is so small – as is evident in Schedule 1 – this may be, and in this case is, another contextual pointer that the inconsistency contemplated by clause 2 concerns any inconsistency between clause 4 of the Schedule and other parts of the Agreement dealing with the capacity of Airservices to terminate the employment of an employee.

[27] Clause 4 of Schedule 1 permits Airservices to terminate the employment of an Ab Initio in the limited circumstance identified – failing to satisfactorily complete an essential component of training – unencumbered by any other precondition or procedural step. Once the identified precondition is met in relation to a particular Ab Initio, Airservices may, but need not, terminate the employment of that Ab Initio. This is quintessentially a discretionary power conferred by the Agreement, the exercise of which is in terms unfettered by any particular considerations beyond the failure to satisfactorily complete an essential component of training.

[28] By contrast, clause 50 of the Agreement deals with the management of an employee whose performance and/or conduct is unsatisfactory. It is apparent that clause 50 has as its primary focus managing an employee whose performance and/or conduct is unsatisfactory by constructively assisting the employee to improve their performance and/or conduct to a satisfactory level within a reasonable time, giving such feedback and assistance as is appropriate. This is achieved through an informal and formal process. The former consisting of initial or "early intervention" processes which may include, but are not limited to, providing an employee with a course of training or other remediation (clause 50.1). Clause 50 imposes procedural constraints on Airservices' power to terminate the employment of employees for "poor performance and/or conduct." Airservices is required to adhere to the principles of procedural fairness in managing an employee in relation to "suspected under-performance or misconduct" specifically by taking the particular steps set out in clause 50.2. And if Airservices has serious concerns with an employee's performance and/or conduct, it is required to engage in a "formal process" by notifying the employee in writing of its particularised concerns and meeting with the employee before taking any action to manage an employee's poor performance and/or conduct, including, relevantly, to "terminate the employee's employment" (clause 50.3).

[29] Part of the formal process in clause 50 already permits Airservices to "terminate the employee's employment." As clause 50.3 makes clear, among the various actions that Airservices may take to manage an employee's poor performance and/or conduct, Airservices may terminate the employee's employment. If clause 4 of Schedule 1 operates subject to clause 50, then what work has it to do? A discretionary power to terminate employment for poor performance and/or conduct subject to the procedural requirements in clause 50 already exists in clause 50. Moreover, if as the Commissioner reasoned, clause 4 of Schedule 1 merely clarifies the rights of the parties in respect of an Ab Initio who may have their employment terminated if they fail to satisfactorily complete an essential component of their training (at [60]) and as such it gives permission to Airservices for termination of employment for the reason of the specified failure, a more likely and obvious form of clarification would be to have used the mechanism in clause 3 and provide that "clause 50 applies to an Ab Initio's failure to

satisfactorily complete an essential component of their training" or perhaps that "an Ab Initio's failure to satisfactorily complete an essential component of their training is poor performance to which clause 50 applies".

[30] The better and correct construction of clause 4 of Schedule 1 is that if an Ab Initio "fails to satisfactorily complete an essential component of their training", clause 4 operates to allow Airservices to "terminate the employment" of that employee. It operates both as permission and authority to terminate the employment of an Ab Initio in the circumstances described. Except in the case of serious misconduct warranting summary dismissal, clause 50 requires particular steps to be undertaken by Airservices before it may terminate an employee's employment. The power in clause 4 of Schedule 1 is conditioned only by an Ab Initio's failure to satisfactorily complete an essential component of training. No steps need be taken before dismissal. By reason of clause 2 of Schedule 1, clause 50 does not operate upon the discretionary power in clause 4 to terminate employment in the circumstances described because a requirement to comply with clause 50 would interfere with the unfettered discretionary power to terminate an Ab Initio's employment in that circumstance which clause 4 confers.

[31] Clause 4 of Schedule 1 is not a general unencumbered right to terminate the employment of an Ab Initio for poor performance or conduct. It is limited to the circumstance described. Other forms of poor performance or conduct in which an Ab Initio might engage are to be addressed in accordance with clause 50.

[32] The limited right to terminate the employment of an Ab Initio with which clause 4 of Schedule 1 is concerned is consistent with the evident object underpinning the employment of an Ab Initio. This object is expressed in clause 1(b) of Schedule 1 – an employee not holding or having previously held an air traffic control licence and who is undergoing training provided by Airservices "with the aim of becoming a licensed air traffic controller". Necessarily, satisfactory completion of the training is required if an Ab Initio is to become licenced and then employed as an Air Traffic Controller by Airservices. Thus, the object of the employment of an Ab Initio is the provision of training by Airservices and the satisfactory completion of the training by the Ab Initio with the aim of becoming an Air traffic Controller. And so, unsurprisingly, the Agreement makes express and unfettered provision for Airservices to determine that employment as an Ab Initio be terminated if the Ab Initio fails to satisfactorily complete an essential component of their training. This is because the Ab Initio failed to achieve the object of their employment.

[33] Understood in this way, clause 4 of Schedule 1 is inconsistent with clause 50 of the Agreement, because the procedural strictures found in the latter fetter the discretionary power to terminate the employment of an Ab Initio in the circumstance described in the former.

[34] It follows that the Commissioner's conclusion that there was no inconsistency between clause 4 of Schedule 1 and clause 50 of the Agreement was incorrect. Consequently, clause 50 does not operate upon the exercise of power to terminate the employment of an Ab Initio if that Ab Initio fails to satisfactorily complete an essential component of their training.

[35] In dealing with this ground of appeal we have accepted that a failure to satisfactorily complete an essential component of training by an Ab Initio, which enlivens the discretionary power in clause 4 of Schedule 1, is poor or unsatisfactory performance and/or conduct which

would otherwise engage with clause 50. It is inherent in Airservices' contention of inconsistency that this must be so. If that were not the case, there would be no inconsistency as clause 50 would not apply and clause 4 would operate according to its terms. Although for different reasons, the result would be the same – clause 50 would not affect or limit the exercise of power to terminate the employment of an Ab Initio if that Ab Initio fails to satisfactorily complete an essential component of their training because such a failure is not poor or unsatisfactory performance and/or conduct with which clause 50 is concerned.

[36] The Commissioner also opined that:

> "Clause 4 of Schedule 1 made plain that a discretion of termination of employment was available if it were established that the exam failed by Mr Crouch was for the purposes of the 2020 Agreement "an essential component" of his training. Likely it is – and certainly Mr Clarke and Mr Bosnich took it to be – however there is insufficient evidence before me on the subject."[15]

[37] The reservation expressed by the Commissioner about whether Mr Crouch's failure of the exam meant that he has failed to satisfactorily complete an essential component of his training on the basis of an insufficiency of evidence, is respectfully misconceived. The evidence was that at the relevant time training as an Air Traffic Controller required study for, and completion of, five phases of theoretical and practical training comprising a total of 23 modules. CASA required trainees to achieve a minimum score of 70% on all theoretical assessments, subject to the discretionary provision of a supplementary assessment if the trainee initially fails to attain this mark.[16] To attain the Diploma of Aviation and to qualify as a licenced Air Traffic Controller, trainees are required to successfully complete each phase of training in order to progress to the next phase.[17]

[38] The failure by Mr Crouch of the supplementary examination taken on 14 August 2020 was in the circumstances plainly a failure to satisfactorily complete an essential component of his training. Clause 4 of Schedule 1 was thereby engaged. For the reasons earlier stated, clause 4 of Schedule 1 is inconsistent with clause 50 of the Agreement and so clause 50 is excluded by clause 2 of Schedule 1 in the circumstances.

[39] It follows that the Commissioner erred in concluding that Airservices has not complied with clause 50 in its dealings with Mr Crouch.

[40] Ground 1 of the notice of appeal is made out and it is therefore unnecessary to consider the other appeal grounds. The appeal must be upheld and the decision quashed.

[41] On a rehearing, for the reasons stated, we answer the questions formulated by the Commissioner as follows:

> Q1: Has Airservices Australia, complied with Clause 50 of the 2020 Agreement?
>
> A: Airservices Australia was not required to comply with clause 50 because, in the circumstances of Mr Crouch's failure to pass the supplementary examination taken on 14 August 2020, the circumstance in clause 4 of Schedule 1 was engaged. Airservices proposes to terminate the employment of Mr Crouch

relying on clause 4 of Schedule 1. Clause 4 of Schedule 1 is inconsistent with clause 50 of the Agreement. By operation of clause 2 of Schedule 1, clause 50 is excluded in the circumstances.

Q2: If not, should Mr Crouch be re-coursed and/or provided with other remedial training in accordance with Clause 50 of the 2020 Agreement to ensure that provision is complied with by Airservices?

A: In light of our answer to Q1, the issue raised by Q2 does not arise.

Order

[42] We order:

1. The appeal is upheld;

2. The decision in *Crouch v Airservices Australia* [2022] FWC 2171 is quashed; and

3. The dispute is determined in accordance with the answers given at [41] above and the application in C2021/6964 is dismissed.

DEPUTY PRESIDENT

Appearances:

Mr D. Chin SC with *Ms V. Bulut* of Counsel, for the appellant.
Mr M. Minucci of Counsel for the respondent.

Hearing details:

2022
Sydney
21 November

Printed by authority of the Commonwealth Government Printer

<PR750087>

[1] See Attachment 1 to the *Airservices Australia (Air Traffic Control and Supporting Air Traffic Services) Enterprise Agreement 2020-2023*

[2] Appeal Book 1220, 1304 - RTO 5168 – Air Traffic Control (ATC) Training Manual at [10.7]; Trainee TSA Workbook Airservices 119 – Separation Standards

[3] Appeal Book 1012-1013 at [33] – [36], Appeal Book 1424 at [9]

[4] Appeal Book 1424 at [13]

[5] *Crouch v Airservices Australia* [2022] FWC 2171 at [233]

[6] *Crouch v Airservices Australia* [2022] FWC 2171 at [26]

[7] Ibid at [226] – [228]

[8] Ibid at [240]

[9] Ibid at [241]-[242]

[10] Ibid at [242]

[11] Ibid at [22]-[25]

[12] Ibid at [26]

[13] Ibid at [69]

[14] Transcript PN55-PN58

[15] *Crouch v Airservices Australia* [2022] FWC 2171 at [233]

[16] Appeal Book 1220, RTO 5168 – Air Traffic Control (ATC) Training Manual at [10.7]; Appeal Book 1304 -Trainee TSA Workbook Airservices 119 – Separation Standards

[17] Appeal Book 1424 at [13]