

# QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Racine v Moreton Bay Regional Council* [2024]  
QIRC 092

PARTIES: **Racine, Jason David**  
(Applicant)

v

**Moreton Bay Regional Council**  
(Respondent)

CASE NO: B/2019/69

PROCEEDING: Application – Recovery of Unpaid Wages

DELIVERED ON: **23 April 2024**

HEARING DATE: 25 March 2024

MEMBER: Hartigan DP

HEARD AT: Brisbane

ORDER: **The application is dismissed.**

CATCHWORDS: INDUSTRIAL LAW – RECOVERY OF UNPAID  
WAGES – Applicant seeking to recover unpaid  
wages – application of Modern Award – whether  
the Applicant is entitled to an allowance –  
application dismissed.

LEGISLATION: *Industrial Relations Act 2016* (Qld), s 475

*Moreton Bay Regional Council Certified  
Agreement 2014*

*Moreton Bay Regional Council Certified  
Agreement 2019*

*Queensland Local Government Industry Award – State 2014*

*Queensland Local Government Industry Award – State 2017*

CASES:

*Brisbane City Council v Queensland Services, Industrial Union of Employees* [2021] QIRC 005

*Queensland Services, Industrial Union of Employees v Moreton Bay Regional Council* [2022] ICQ 023

*Queensland Services, Industrial Union of Employees v Moreton Bay Regional Council (No 2)* [2022] ICQ 026

## **Reasons for Decision**

### **Introduction**

- [1] Mr Jason Racine seeks to recover unpaid wages pursuant to s 475(1)(a) of the *Industrial Relations Act 2016* (Qld) ('IR Act').
- [2] The quantum of the amount claimed is \$1,801.29, although the parties have agreed that matters relevant to quantum should be determined at a later date, if necessary.
- [3] The issue to be determined is whether Mr Racine is entitled to the construction worker's allowance ('CWA') pursuant to Division 2, Section 5, cl 13.2 (a) of the *Queensland Local Government Industry Award – State 2017 Stream B* ('the 2017 Partitioned Award') ('the issue to be determined') currently.

### **Relevant history and background of claim**

- [4] Mr Racine commenced employment with Moreton Bay Regional Council ('the Council') on 26 April 2016. Mr Racine was employed pursuant to a fixed term contract in the position of Labourer – Parks Crew (Level 3).
- [5] Mr Racine's contract of employment signed 21 March 2017 ('the contract') states that his conditions of employment are governed by the *Queensland Local Government Industry Award – State 2014* ('2014 Award') and the *Moreton Bay Regional Council Certified Agreement 2014* ('EBA 3') and relevant Council policies.
- [6] The contract also identifies that Mr Racine is to receive the Local Government Industry Allowance ('LGIA') pursuant to cl 13(a) of the 2014 Award and the Uniform and

Laundry Allowance pursuant to cl 13(o) of the 2014 Award. The contract does not identify any entitlement to the CWA.

- [7] On 1 September 2016, a variation of the 2014 Award ('the 2014 Award - version 2') came into effect which provided for the CWA.<sup>1</sup>
- [8] The 2014 Award – version 2 was subsequently found to be invalid by the Industrial Court of Queensland.<sup>2</sup>
- [9] On 28 February 2017 the *Queensland Local Government Industry Award – State 2017* ('2017 Award') came into effect. The 2017 Award included the Construction, Reconstruction, Alteration, Repair and/or Maintenance Work Allowance<sup>3</sup> however, it did not include the LGIA.
- [10] On 1 July 2017, the 2017 Partitioned Award came into effect which also included the CWA and, similarly, it did not include the LGIA.
- [11] From the commencement of Mr Racine's employment until 28 October 2019, the Council continued to pay Mr Racine the LGIA.
- [12] In August 2019, Mr Mark Moorhead, Union Delegate for the Australian Worker's Union, made enquiries on behalf of Mr Racine to the Council regarding Mr Racine's entitlement to the CWA under the 2017 Award and the 2017 Partitioned Award.
- [13] By email correspondence dated 29 August 2019, the Council advised Mr Moorhead that Mr Racine was only entitled to the allowances contained in the 2014 Award while the EBA 3 was still in effect. The Council further advised that if the 2017 Award and the 2017 Partitioned Award did apply, it was unlikely that Mr Racine, given the nature of his role, would be entitled to the CWA.
- [14] On 28 October 2019 the *Moreton Bay Regional Council Certified Agreement 2019 EBA4* ('EBA 4') was certified. As a result of the certification of the EBA 4, Mr Racine's employment conditions were amended pursuant to the EBA 4 and the 2017 Partitioned Award. The EBA 4 re-introduced the LGIA.
- [15] The Council disputes that Mr Racine is entitled to the CWA and contends that the work performed by Mr Racine does not satisfy the eligibility criteria set out in cl 13.2 of the 2017 Partitioned Award.
- [16] During the conciliation process, the proceedings were placed into abeyance pending the release of a decision by the Industrial Court in matters D/2018/57 and C/2020/4 by agreement of the parties.

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<sup>1</sup> A version of the CWA had previously been included in the former 2003 – *Local Government Employees' (Excluding Brisbane City Council)* – Modern Award.

<sup>2</sup> *Queensland Services Industrial Union of Employees v Moreton Bay Regional Council* [2022] ICQ 023.

<sup>3</sup> *Queensland Local Government Industry Award – State 2017* Div 3, s 5, cl 13.2.

[17] Following the release of a decision for matters D/2018/57 and C/2020/4<sup>4</sup>, the parties attempted to conciliate the matter further. The matter was unable to be resolved and ultimately it was referred to arbitration for hearing.

[18] The parties filed written submissions. Each of the parties sought declaratory relief that appeared to go beyond the scope of the application.

[19] Relevantly, Mr Racine sought the following declaratory relief:

- a. I am therefore seeking a declaration from the Commission that the 2017 Award and the 2017 Partitioned Award applied to my employment during the life of EBA3, on the basis that these were the instruments that varied and replaced the 2014 Award, as contemplated by cl. 1.8 of EBA3.
- b. I am respectfully seeking a declaration from the Commission that the CWA contained in the 2017 Award and 2017 Partitioned Award applied to my employment during the period 28 February 2017 to 28 October 2019.

[20] The Council also sought declaratory relief in the following terms:

- a. The Respondent is therefore seeking a declaration from the Commission that the 2017 Award and the 2017 Partitioned Award – Clause 13.2 did not apply to the Applicant in their performance of work during their employment from 28 February 2017 until 28 October 2019, and as a result they were not entitled to be paid the allowance.

[21] It was intended that the hearing proceed on the papers, however, the matter was listed for hearing on 25 March 2024, in order to seek clarification with respect to the written submissions filed by the parties including as to the nature of the relief sought and the parties' respective positions regarding the relief.

[22] During the course of the hearing, the following occurred:

- a. Mr Racine withdrew the declaratory relief he sought in his written submissions;
- b. the Council withdrew the declaratory relief it sought in its written submissions;
- c. the parties agreed that the issue to be determined was whether Mr Racine is entitled to the CWA as set out in the 2017 Partitioned Award during the relevant period; and
- d. the parties agreed that the 2017 Award is not relevant to my consideration of this issue.

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<sup>4</sup> *Queensland Services, Industrial Union of Employees v Moreton Bay Regional Council* [2022] ICQ 023; *Queensland Services, Industrial Union of Employees v Moreton Bay Regional Council (No 2)* [2022] ICQ 026.

## Relevant legislative provisions and authorities

- [23] The application for unpaid wages made by Mr Racine is in accordance with s 475 of the IR Act. Section 475 of the IR Act relevantly provides:

**475 Power to recover unpaid wages and superannuation contribution etc.**

(1) On application by a person under *section 476*, the commission may order payment of the following for the period of 6 years before the date of the application—

- (a) an employee's unpaid wages;
- (b) an apprentice's unpaid tool allowance under *section 137*;
- (c) remuneration lost by an apprentice or trainee because the employer has contravened *section 371 (2)*;
- (d) contributions to the approved superannuation fund payable for an eligible employee that are unpaid.

(2) A presidential member may, either before or after the start of a hearing, remit the application to a magistrate if the presidential member considers the application could be more conveniently heard by a magistrate, having regard to, for example, costs or the difficulty or expense of producing witnesses.

(3) If the application is remitted to a magistrate, the magistrate may hear and decide the application as if it had been brought before the commission, and the magistrate's decision is taken to be a decision of the commission.

- [24] The parties have each made submissions with respect to the construction of the relevant provisions of the 2017 Partitioned Award.

- [25] With respect to the construction of an award, in *Brisbane City Council v Queensland Services, Industrial Union of Employees*<sup>5</sup> Deputy President Merrell sets out the general principles to be applied in the construction of an award made by the Queensland Industrial Relations Commissions as follows:

...

- [34] The general principles to be applied in the construction of an award made by the Queensland Industrial Relations Commission are capable of succinct recitation.

- [35] First, the task of construction begins with the consideration of the ordinary meaning of its words.

- [36] Secondly, regard must be paid to the context and purpose of the provision or expression being construed. The context:

- may appear from the text of the instrument taken as a whole, its arrangement and the place in it of the provision under construction;
- is not confined to the words of the relevant Act or instrument surrounding the expression to be construed, and it may extend to the entire document of which it is a part or other documents with which there is an association and may also include ideas that gave rise to an expression in a document from which it has been taken; and
- extends to the origins of the particular clause, however, frequently and perhaps most often, the immediate context is the clearest guide.

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<sup>5</sup> [2021] QIRC 005.

[37] Thirdly, awards made by the Queensland Industrial Relations Commission are statutory instruments within the meaning of s 7 of the *Statutory Instruments Act 1992*. This is because they are instruments made under an Act and are instruments of the type referred to in s 7(3) of the *Statutory Instruments Act 1992*, namely an instrument of a public nature by which the entity making the instrument (the Commission) unilaterally affects a right or liability of another entity. By virtue of pt 4 of the *Statutory Instruments Act 1992*, certain provisions of the *Acts Interpretation Act 1954* apply in the construction of awards, including:

- section 14A(1) of the *Acts Interpretation Act 1954*, which provides that in the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation;
- section 14B of the *Acts Interpretation Act 1954*, as modified by s 15 of the *Statutory Instruments Act 1992*, which provides that consideration may be given to extrinsic material capable of assisting in interpretation in particular circumstances;
- section 32A of the *Acts Interpretation Act 1954*, which provides that definitions in or applicable to an Act apply except so far as the context or subject matter otherwise indicates or requires; and
- section 32AA of the *Acts Interpretation Act 1954*, which provides that a definition in or applying to an Act applies to the entire Act.

[38] Fourthly, an award should not be interpreted in a vacuum divorced from industrial realities.

[39] Fifthly, there is a long tradition of generous construction over a strictly literal approach which at least means that courts and tribunals will not make too much of infelicitous expression in the drafting of an award nor be astute to discern absurdly or illogicality or apparent inconsistencies.

[40] Sixthly, while narrow or pedantic approaches to the construction task are misplaced, a court is not free to give effect to some anteriorly derived notion of what is fair or just regardless of what has been written in the award.

[41] Seventhly, while the context and purpose are relevant, ultimately, the task is to give effect to the meaning of the instrument as expressed in its words, objectively construed.

[42] Finally:

- the construction of an award can be affected by a common understanding of the parties to it about a particular state of affairs, and if such a common understanding existed when the award was made, it should not be departed from when the court comes to construe the award at a subsequent time;
- however, care must be taken to distinguish a common understanding from common inadvertence in that there can be no meeting of the minds, no consensus, if no one has thought about the issue; and
- evidence of the conduct of the parties subsequent to the making of an award cannot be relied upon to construe it.

(citations omitted)

## Construction Workers' Allowance

[26] The CWA provided for in the 2017 Partitioned Award is set out in the following terms:

### 13.2 Construction, reconstruction, alteration, repair and/or maintenance work

- (a) Subject to clauses 13.2(e) to (g) all employees whilst actually engaged on construction, reconstruction, alteration, repair and/or maintenance work (as defined in clause 13.2(c)) on site shall be paid an allowance as set out below which shall be treated as part of the ordinary weekly wage for all purposes of this Award to compensate for listed disabilities in clause 13.2(b):
  - form setters and form setters assistants - at the rate of \$28.65 per week;
  - all other employees - at the rate of \$29.70 per week.
- (b) Listed disabilities:
  - (i) climatic conditions where working in the open on all types of work;
  - (ii) the physical disadvantages of having to climb stairs or ladders;
  - (iii) dust blowing in the wind on construction sites;
  - (iv) sloppy or muddy conditions;
  - (v) dirty conditions;
  - (vi) drippings from newly poured concrete;
  - (vii) the disability of work on all types of scaffold other than a single plank or bosun's chair;
  - (viii) (viii) the lack of usual amenities associated with factory work; and
  - (ix) (ix) all other present disabilities not specifically compensated or allowed for by any other provision of this Award.
- (c) For the purposes of clause 13.2(a), **construction, reconstruction, alteration, repair and/or maintenance work** shall mean and include all work performed on site on construction, reconstruction, alteration, repair and/or maintenance of buildings, (including the construction of additions to existing buildings and the necessary alterations to existing buildings to make them conform to any new additions and the demolition of buildings), water towers, water mains, or reservoirs; dams, barrages, weirs or similar structures, bridges, wharves, piers or jetties, over-passes, under-passes and concrete work incidental thereto; sewerage construction work; pipelines, culverts, kerbing, channelling, roads, traffic islands, and concrete ornamental lakes and land reclamation and or land clearing associated with estate development and building construction.
- (d) An employee receiving payment pursuant to clause 13.2(a) shall not be entitled to any payment in relation to the following disability allowances:
  - (i) clauses 13.5(a) to (d) (dirt money); or
  - (ii) clauses 13.24(a) to (d) (work in wet places).

...

[27] The dispute between the parties requires consideration of the construction of cl 13.2 and in particular the meaning of "maintenance of ... culverts, kerbing, channelling, roads and traffic islands", which are the words relied on by Mr Racine in support of his position. The construction of cl 13.2(a) must be considered within the context of the clause and the 2017 Partitioned Award as a whole.

[28] In this regard, cl 13.2 appears within cl 13 which relevantly states as follows:

**13. Allowances**

In addition to the allowances prescribed in cl 13 of Division 1 – Provisions with common application, clauses 13.1 to 13.27 below also apply to employees covered by this section.

[29] Examples of other employees who receive an allowance pursuant to cl 13 include: bus drivers (clause 13.1); cemetery operators (clause 13.3); and mechanical plant operators whilst working in a clay pit (clause 13.4).

[30] Mr Racine submits that a "generous construction" of the application of cl 13.2(c) would support a conclusion that the drafters did not intend "for a distinction to be made between employees who are subject to the same disabilities simply because of the medium that they work on, concrete or vegetation", rather the clause should be construed to cover all employees "suffering those disabilities".

[31] I do not consider that this submission is consistent with the purpose of cl 13 which is, relevantly, to prescribe various allowances to particular classes of employees depending on the tasks they perform.

[32] Relevantly, cl 13.2(a) has the following elements:

- a. "subject to clauses 13.2 (e) to (g), all employees" ('limb one');
- b. "whilst actually engaged on construction, reconstruction, alteration, repair and maintenance work (as defined in cl 13.2(c)) on site" ('limb two'); and
- c. "shall be paid an allowance as set out below which shall be treated as part of the ordinary weekly wage for all purposes of this Award to compensate for listed disabilities in clause 13.2(b)" ('limb three').

[33] Limb one clarifies the class of employees who are to be covered by cl 13.2(a) and identifies the following employees as not being covered:

- (e) An employee shall not be entitled to the allowance in clause 13.2(a) where they are in receipt of an allowance pursuant to:
  - (i) clause 13.4 (clay pit allowance); or
  - (ii) clause 13.5(f) (bitumen sprayer allowance); or
  - (iii) clause 13.12 (live sewer work allowance); or
  - (iv) clause 13.16 (quarry allowance); or
  - (v) clause 13.18 (rubbish and sanitary operations allowance); or
  - (vi) or additional payment or disabilities allowance for a specific project.



- (f) The allowance prescribed in clause 13.2(a) is not payable to an employee engaged at a treatment plant.
- (g) Clause 13.2(c) shall not, in relation to dams, weirs and barrages include the following classes of work:
  - (i) operation of the dam, weir or barrage;
  - (ii) construction or maintenance of tourist facilities; or
  - (iii) gardening, grass cutting or other agricultural operations.

- [34] Mr Racine does not fall within any of the employees who are excluded from receiving the CWA as set out in cl 13.2(f) and (g).
- [35] Mr Racine further claims that the reference to "dam workers" in cl 13.2(g)(iii) who perform grass cutting work assists in his construction of the provision on the basis that gardening, grass cutting, and other agricultural operations are specifically excluded for dams, weirs, and barrages. Mr Racine submits that an inference could be drawn that it is necessary to exclude that class of employee because they would, but for the operation of cl 13.2(g), be included in the class of employees who perform work as described in cl 13.2(c).
- [36] The purpose of cl 13.2(g), is to identify a class of employee who is excluded from eligibility of the CWA. Mr Racine simply relies on the reference to "grass cutting" in cl 13.2(g) to support a submission that gardening and grass cutting duties must then be contemplated as relevant work for the purpose of cl 13.2(a) and would be included, but for the exclusion contained in cl 13.2(g)(iii).
- [37] Mr Racine's submission is unable to be accepted. Firstly, cl 13.2(g) specifically seeks to exclude classes of work associated with dams, weirs or barrages. Sub-paragraphs (i)-(iii) of cl 13.2(g) refers to a broad range of work including (but not limited to) the operation of the dam, weir or barrage together with gardening, grass cutting or other agricultural operations. These tasks do not fall neatly within the type of work provided for in cl 13.2(c).
- [38] In order to accept Mr Racine's position, his argument would necessarily also be applicable to cl 13.2(g)(i). That is, the reference to those employees who operate dams, weirs or barrages is included because those employees would also be covered cl 13.2(c). Such employees do not fall within the class of employee referred to cl 13.2(c).
- [39] I do not consider that cl 13.2(g)(iii) assists in the construction of the term "maintenance" as contended by Mr Racine. I will consider that construction further.
- [40] Limb two relies on the definition in cl 13.2(c) as an aid to the construction of clause 13.2(a).
- [41] Clause 13.2(c) provides that, for the purpose of cl 13.2(a), the phrase "construction, reconstruction, alteration, repair and/or maintenance work" shall mean and include "all work performed on site on construction, reconstruction, alteration, repair and/or

maintenance of buildings, (including the construction of additions to existing buildings and the necessary alterations to existing buildings to make them conform to any new additions and the demolition of buildings), water towers, water mains, or reservoirs; dams, barrages, weirs or similar structures, bridges, wharves, piers or jetties, over-passes, under-passes and concrete work incidental thereto; sewerage construction work; pipelines, culverts, kerbing, channelling, roads, traffic islands, and concrete ornamental lakes and land reclamation and or land clearing associated with estate development and building construction."

[42] In this respect, cl 13.2(c) identifies the type of work and the infrastructure that the work is to be performed on in order to attract the CWA.

[43] Clause 13.2(c) has a number of elements to it, including:

- a. whilst actually engaged in construction, reconstruction, alteration, repair and/or maintenance work on site; and
- b. for undertaking all work on site on construction, reconstruction, alteration, repair and/or maintenance of the infrastructure listed in cl 13.2(c).

[44] From the above, it is apparent that the allowance would only be payable for maintenance work actually engaged in whilst on site.

[45] The parties are in agreement that the ordinary meaning of the word "maintenance" should be adopted. The parties agree on the following meaning:

"keeping something in due condition, operation or force."

[46] This definition also must be considered in the context of the words around it including relevantly, the words "construction, reconstruction, alteration, repair." Each of these words are consistent with work performed generally in construction. Mr Racine does not rely on any of the other words that describe the work to be performed in cl 13.2(c) to be eligible for the CWA.

[47] Limb three provides for the payment of the allowance in order to compensate for the disabilities listed in cl 13.2(b). These disabilities include:

- (i) climatic conditions where working in the open on all types of work;
- (ii) the physical disadvantages of having to climb stairs or ladders;
- (iii) dust blowing in the wind on construction sites;
- (iv) sloppy or muddy conditions;
- (v) dirty conditions;
- (vi) drippings from newly poured concrete;
- (vii) the disability of work on all types of scaffold other than a single plank or bosun's chair;
- (viii) the lack of usual amenities associated with factory work; and
- (ix) all other present disabilities not specifically compensated or allowed for by any other provision of this Award.

- [48] Mr Racine contends that he is, at times, exposed to some of the listed disabilities when he performs work. However, the purpose of cl 13.2(a) is to compensate those relevant employees who perform the work described in cl 13.2(c) when they are exposed to the above listed disabilities.
- [49] Accordingly, the effect of the three limbs of cl 13.2(a) is that the CWA is payable to all employees except those listed in clauses 13.2(e) to (g) for all work performed on site that is construction, reconstruction, alteration, and repair and/or maintenance of the infrastructure within the meaning of those listed in cl 13.2(c) to be compensated for working in the conditions listed in cl 13.2(b).

### **Consideration**

- [50] The parties agree that the following three questions should be considered in determining the dispute:
- (1) was Mr Racine performing maintenance duties?;
  - (2) were the conditions Mr Racine operated within whilst performing maintenance duties aligned with some of the listed disabilities in cl 13.2(b)?; and
  - (3) were the maintenance duties performed by Mr Racine on some of the listed infrastructure within cl 13.2(c)?.

- [51] It is convenient to deal with ground one and ground three together.

### **Ground one: Was Mr Racine performing maintenance duties?**

### **Ground three: Was the maintenance duties performed by Mr Racine on some of the listed infrastructure within cl 13.2(c)?**

- [52] Mr Racine contends, relevantly, that he is entitled to the CWA when he performs "maintenance" on "culverts, kerbing, channelling, roads" and "traffic islands".
- [53] In this respect, Mr Racine contends that ground one and ground three should be answered in the affirmative with such a finding being supportive of his position that he satisfies each of the three limbs of cl 13.2(a) and consequently, that he is entitled to the CWA.
- [54] Mr Racine characterises the work he performs as a Parks Labourer as follows:

- ...
13. In the course of carrying out my duties I am required to conduct *maintenance* in the form of whipper snipping grass around *culverts, kerbing, channelling roads and traffic islands*. I am required to blow out leaves out of gutters and to shovel out sand or debris from *culverts, kerbing, channelling, roads, traffic islands*...

[55] I accept that the ordinary meaning of maintenance includes relevantly, to maintain the Council's infrastructure, relevant to Mr Racine's duties, by keeping that infrastructure in due condition, operation or force.

[56] In order to provide further clarity around the duties performed by Mr Racine, it is necessary to consider the evidence before the Commission as to the nature of his duties.

[57] A job task analysis document describes the position description for Mr Racine's position as follows:

Parks Crew Labourers and Crew Leaders maintain the open space areas of parks and reserves throughout the Moreton Bay Regional Council area, including mowing, hedging, pruning, planting and weed spraying.

[58] The job task analysis document also outlines the tasks performed by Mr Racine's role as follows:

Work within the parks crew is seasonal, with more mowing, spraying and whipper-snipping in summer and more planting and mulching in winter:

- Mowing – 70% (summer), 15% (winter);
- Spraying and using whipper-snipper 30% (summer);
- Planting – 40 % (winter);
- Hedging, pruning and tree trimming/lifting – 5%.

[59] It appears that Mr Racine contends that when he is, for instance, mowing grass or whipper-snipping on, or around, or adjacent to, for instance, kerbing, he is maintaining the kerbing by maintaining the grass.

[60] However, I consider that there is a need for greater analysis of the work performed by Mr Racine. Relevantly, when Mr Racine for instance, cuts the grass, he is keeping the grass in due condition, operation or force.

[61] I accept that if the grass is not maintained that this in turn may affect other infrastructure for instance, by the grass overgrowing onto kerbing. However, this is rectified by maintenance conducted on the overgrown grass rather than by conducting maintenance on the kerbing.

[62] Relevantly, there is evidence that other classes of employees perform maintenance on the infrastructure listed in cl 13.2(c). For instance, the Roads and Drainage (RAD) labourers and crew leaders, are responsible for the repair, installation and maintenance of footpaths, kerbs, channels, drains, road signs and street signs.<sup>6</sup>

[63] For these reasons, I consider that when Mr Racine performs maintenance duties in keeping with his position description, for instance by mowing, hedging, pruning, planting and weed spraying, that he is maintaining the open space area of parks and reserves.

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<sup>6</sup> Job Task Analysis Sheet for the Road and Drainage Labourers and Crew Leaders.

- [64] It follows that when Mr Racine is performing such maintenance duties Mr Racine is doing so in the course of maintaining the Council's green space. Whilst Mr Racine might be performing such tasks when he is on or adjacent to the infrastructure listed in cl 13.2(c) he is not maintaining that infrastructure.
- [65] In the course of his duties, Mr Racine was performing maintenance on open space areas of parks and reserves by mowing, hedging, pruning, planting and weed spraying.
- [66] For this reason, the answer to question one is "yes" and the answer to question three is "no".

**Ground two: Were the conditions Mr Racine operated within whilst performing maintenance duties aligned with some of the listed disabilities in cl 13.2(b)?**

- [67] Mr Racine submits that in the performance of his duties, he experiences the following disabilities:

15. I work outdoors and encounter the following disabilities from the list in 13.2(b) from the Award:
  - a) climatic conditions where working in the open on all types of work;
  - b) dust blowing in the wind on construction sites;
  - c) sloppy or muddy conditions;
  - d) dirty conditions;
  - e) the lack of usual amenities associated with factory work; and
  - f) all other present disabilities not specifically compensated or allowed for by any other provision of this award.

- [68] In its reply submissions, the Council submits that although Mr Racine would be subjected to some of the disabilities listed in cl 13.2(b), this does not in and of itself result in Mr Racine being entitled to the CWA.
- [69] Given that I have found that ground three does not fall in Mr Racine's favour, there is little to be gained by considering ground two in any depth.
- [70] That is because I have concluded that Mr Racine did not perform the type of maintenance duties described in cl 13.2 (c) and consequently, limb two of cl 13.2(a) has not been established.
- [71] The purpose of the CWA is to compensate the relevant employees for being subjected to the disabilities whilst performing duties on relevant infrastructure as described in cl 13.2(c).
- [72] For the forgoing reasons, I have found that the CWA allowance does not apply to Mr Racine when he performs duties consistent with his role as a Labourer – Parks Crew. Consequently, the application is dismissed.

**Order**

[73] I make the following orders:

**The application is dismissed.**