



High Court Ruling on Leave Accrual

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Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union; Minister for Jobs and Industrial Relations v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [2020] HCA 29

The Facts

In August 2019, employees at a food manufacturing plant (**Mondelez Australia**) argued that they were entitled to ten 12-hour days of personal or carer's leave a year, due to their ordinary hours in a day containing 12-hour shifts.

Under their employment contract, Mondelez Australia employees worked 36 hours per week, averaged over a 4-week cycle. This resulted in their ordinary hours containing, on average, three 12-hour shifts per week.

Where an employee took personal or carer's leave for a day, the employee had 12 hours deducted from their leave accrual. This meant that employees were only receiving eight days of personal or carer's leave per annum.

As a result, the Australian Manufacturing Workers' Union (**AMWU**) representing the employees claimed that section 96 of the [Fair Work Act 2009](#) (**FWA**), specifically the National Employment Standards (**NES**), entitled them to accrue ten 12-hour shifts (120 hours for these employees specifically) of paid personal or carer's leave per year of service. Section 96 of the FWA states:

- For each year of service with his or her employer, an employee is entitled to 10 days of paid personal or carer's leave; and
- An employee's entitlement to paid personal or carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.



The interpretation of the word 'day' is central to the cause of the dispute.

AMWU argued that the word 'day' refers to a normal 'calendar day', where employees are able to be absent from work over 10 calendar days in a year without the loss of pay (i.e. 120 hours for the employees in this case).

Whereas Mondelez argued that the word 'day' refers to a 'notional day' where the hours are calculated in reference of the employees average weekly ordinary hours divided by five.

On 21 August 2019, the Full Federal Court handed down its decision in the [Mondelez v AMWU](#) case.

However, on 13 August 2020 the High Court overruled the Federal Court judgment and declared that:

"The expression '10 days' in s96(1) of the Fair Work Act 2009 (Cth) means an amount of paid personal/carer's leave accruing for every year of service equivalent to an employee's ordinary hours of work in a week, over a two-week (fortnightly) period, or 1/26 of the employee's ordinary hours of work in a year. A 'day' for the purposes of s96(1) refers to a 'notional day', consisting of one-tenth of the equivalent of an employee's ordinary hours of work in a two-week (fortnightly) period."

Another Example

Jeffrey is a permanent part-time employee who will accrue personal or carer's leave on a pro-rata basis and is contracted to work 25 ordinary hours per week.

Over the period of a year, Jeffrey works 1,300 hours (25 hrs per week x 52 weeks in a year).

Personal or carer's leave is applied at a rate of 1/26 of the total ordinary hours per annum. The calculation for this is:

- 1,300 hours per annum divided by 26 equalling 50 hours of personal or carer's leave per annum.

In Summary

On 13 August 2020, the High Court handed down a decision about the method of accruing and taking paid personal or carer's leave under the National Employment Standards. **The High Court has found that the entitlement to 10 days of personal or carer's leave is calculated based on an employee's hours of work, not days.**

Ten (10) days of personal leave can be calculated as 1/26 of an employee's ordinary hours of work in a year.

The High Court's decision overturns and clarifies the decision of the Full Federal Court from 2019.

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