



Menu



Full court rules on leave test case

Wednesday, August 21, 2019, 5:25pm

A full Federal Court has ruled today that a pair of 12-hour shift workers at a Cadbury chocolate factory are entitled to 10 calendar days of paid personal/carer's leave, rather than a lesser amount argued by their employer and the Federal IR Minister.

Justices Mordy Bromberg, Darryl Rangiah and David O'Callaghan accepted the AMWU's interpretation of the NES entitlement at [s96\(1\)](#), which provides that employees are entitled to 10 days of personal/carers leave per year of service.

The union said in a statement today that the NES mandates a minimum of 10 days of such leave and with the employees working 12-hour shifts, this should give them an entitlement to 120 hours of paid time off, whereas the company argued they were due 10 shifts of 7.6 hours each, or 76 hours.

"If you need to take a sick day, you should be paid for your normal hours of work, it's as simple as that.

"And you should be able to take ten sick days paid at your normal hours of work," AMWU Tasmanian branch secretary John Short said.

While the full court agreed that it should reject the application by the company for a declaration that under the [agreement](#) for the Claremont site in Tasmania, when the employees are absent from a 12-hour shift, then 12 hours should be deducted from their personal/carer's leave balance, it split on the second declaration the employer sought.

Justices Bromberg and Rangiah refused to declare that the entitlement to paid personal/carer's leave was "more beneficial" than that under the NES, while Justice O'Callaghan said he would have acceded to the employer's request.

The Australian Industry Group, which acted for Mondelez, siezed on the dissenting view, saying that Justices Bromberg and Rangiah's ruling "is inconsistent with the widespread industry practice and will have substantial cost implications for a large number of employers, if the decision stands".

It continued in a statement that the Claremont agreement states that the 12-hour shiftworkers are entitled to 96 hours of personal/carer's leave a year.

"This is a lot more generous than the 76 hours that employees would have been entitled to under the Fair Work Act if the Act had been interpreted in the manner that aligns with the widespread industry practice."

ACTU secretary Sally McManus said the Coalition Government's intervention "on the side of a company that is trying to cut people's personal leave below the legal minimum is a disgrace".

[Mondelez v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union Known as the Australian Manufacturing Workers Union \(AMWU\) \[2019\] FCAFC 138 \(21 August 2019\)](#)

RELATED CONTENT

-  [Leave stoush inches towards trial](#)

-  [FWO publishes disclaimer as leave uncertainty swirls](#)

-  [Laundy intervenes as employer takes leave challenge to court](#)

-  [FWC rebuffs Laundy bid for full bench determination on leave](#)

LATEST JOBS

Industrial Relations & Employment Lawyer
IR Advisor
Senior Employee Relations Consultant
Experienced Industrial Officer - 18mth Contract
National Legal Officer – Victoria & Tasmania

[About us](#) · [Contact us](#) · [Terms of use](#) · [Privacy policy](#) · [FAQs](#) · [RSS / XML Feed](#)

Specialist News

Copyright © Workplace Express 2019. Workplace Express is a Specialist News Pty Ltd publication - ABN 33 093 580 413.