



HIGH COURT OF AUSTRALIA

13 August 2020

MONDELEZ AUSTRALIA PTY LTD v AUTOMOTIVE, FOOD, METALS, ENGINEERING,
PRINTING AND KINDRED INDUSTRIES UNION KNOWN AS THE AUSTRALIAN
MANUFACTURING WORKERS UNION (AMWU) & ORS; MINISTER FOR JOBS AND
INDUSTRIAL RELATIONS v AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING
AND KINDRED INDUSTRIES UNION KNOWN AS THE AUSTRALIAN MANUFACTURING
WORKERS UNION (AMWU) & ORS

[2020] HCA 29

Today the High Court allowed an appeal from a judgment of the Full Court of the Federal Court of Australia ("Full Federal Court") concerning how the entitlement to paid personal/carer's leave is calculated under s 96(1) of the *Fair Work Act 2009* (Cth).

Section 96(1) says that "[f]or each year of service with his or her employer, an employee is entitled to 10 days of paid personal/carer's leave". Section 96(2) says that an employee's entitlement to this leave "accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year". Under s 99, payment for leave taken is calculated by reference to an employee's "ordinary hours of work". Section 55(4) says that an enterprise agreement may only include terms not detrimental to an employee when compared to certain provisions of the *Fair Work Act* including s 96.

Mondelez Australia Pty Ltd ("Mondelez") employs Ms Triffitt and Mr McCormack. Under their enterprise bargaining agreement, Ms Triffitt and Mr McCormack each work, on average, 36 ordinary hours of work per week. They work an average of three 12-hour shifts per week. Mondelez credits Ms Triffitt and Mr McCormack with 96 hours of paid personal/carer's leave per year of service. When they take paid personal/carer's leave for one 12-hour shift, Mondelez deducts 12 hours from their accrued leave balance. Over the course of one year of service, Ms Triffitt and Mr McCormack accrue paid personal/carer's leave sufficient to cover eight 12-hour shifts. Ms Triffitt and Mr McCormack (together with the Australian Manufacturing Workers Union) argued that s 96(1) entitles them to paid personal/carer's leave sufficient to cover ten absences from work per year. That argument was accepted by a majority of the Full Federal Court which held that "day" in s 96(1) refers to "the portion of a 24 hour period that would otherwise be allotted to work" ("the 'working day' construction").

A majority of the High Court rejected the "working day" construction and instead held that what is meant by a "day" or "10 days" must be calculated by reference to an employee's ordinary hours of work. "10 days" in s 96(1) is two standard five-day working weeks. One "day" refers to a "notional day" consisting of one-tenth of the equivalent of an employee's ordinary hours of work in a two-week period. Because patterns of work do not always follow two-week cycles, the entitlement to "10 days" of paid personal/carer's leave can be calculated as 1/26 of an employee's ordinary hours of work in a year.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.