

# CASE SUMMARY: Mondelez Australia v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [2020] HCA 29

**Description: What is a “day”? Shift workers and employers given answer by High Court.**

	
<a href="#">43</a>	Industrial law
<a href="#">43K2001-K2563</a>	Commonwealth
<a href="#">43K2173-K2270</a>	Terms and conditions of employment
<a href="#">43K2193-K2201</a>	Leave
<a href="#">43K2194</a>	Personal and carer's leave

*entitlement to ‘10 days’ paid leave accruing for every year of service — meaning of ‘day’ — rejection of ‘working day’ construction*

Adoption of a notional working day construction of the statutory entitlement for employees to be paid personal and carer’s leave.

The [FAIR WORK ACT 2009 \(CTH\), S 96\(1\)](#), provides that an employee is entitled to ‘10 days’ of paid personal and carer's leave for each year of service. Under their enterprise agreement, employees working an average of three 12 hour shifts per week were allocated 96 hours of paid personal and carer's leave per year of service by the appellant employer. Upon taking leave, 12 hours was deducted from their accrued leave balance, so that over the course of a year, leave sufficient to cover eight 12-hour shifts was allocated. The full bench of the Federal Court of Australia sitting in its original jurisdiction made declarations to the effect that in the context of [S 96\(1\)](#), ‘day’ refers to the portion of a 24 hour period that would otherwise be allotted to work, such that the employees would be entitled to ten 12 hour periods for each year of service. On appeal to the High Court of Australia, the appellants argued that the word ‘day’ referred to notional days such that leave would accrue by one-tenth of the equivalent of an employee's ordinary hours of work in a two week period.

**Held** (allowing the appeal): For the purposes of the [FAIR WORK ACT 2009, S 96\(1\)](#), a ‘day’ refers to a notional day, being one tenth of the equivalent of an employee's ordinary hours of work per fortnight.