

Stand downs and payments for accrued personal/carer's leave

28 April 2020

Federal Court of Australia: *Transport Workers Union v Qantas Airways Limited*, SD388/2020 and *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Qantas Airways Limited ACN 009 661 901*, NSD376/2020

Employees stood down under section 524 of the *Fair Work Act 2009* (Cth) (FW Act) are not entitled to payments during the stand down period: s 524(3), FW Act.

A period of stand down is where, for example, the employee cannot be usefully be employed because of "... a stoppage of work for any cause for which the employer cannot be reasonably be held responsible." Employees are not stood down during periods of authorised paid or unpaid leave: s 525, FW Act.

However, it has not yet been considered by the courts whether payments of accrued personal/carer's leave or compassionate leave should be made during a stand-down period.

Qantas in the spotlight with a Mondelez-like issue on payments during stand downs

The CEPU, AWU and AMWU presented interesting arguments in an application to the Federal Court, stating that employees stood-down by Qantas Airways Limited are entitled to be paid for accrued personal/carer's leave and compassionate leave during stand-down periods.

The Unions' argue that "payments" as set out under section 524(3) do not include payments for accrued personal/carer's leave and compassionate leave.

This is an unexpected spin-off from *Mondelez v Australia Pty Ltd v AMWU* [2019] FCAFC 138 (Mondelez decision) which characterised paid personal/carer's leave not as a payment but as a "statutory form of income protection for all national system employees, other than casual employees. That protection is provided by authorising employees to be absent from work during periods of illness or injury and requiring employers to pay employees as if they had not been absent."

According to the Unions, the right to this statutory form of income protection does not by definition fall within the payment carveout for employers in section 524(3), FW Act.

Justice Flick noted the Mondelez decision and that the case had made no reference to section 525, FW Act.

Acknowledging the significant industrial ramifications of this case, Justice Flick reserved his decision on 28 April 2020, indicating that he will deliver it within 2 weeks.

We, the Unions and Qantas await his decision with bated breath.

See also: [Personal/carer's leave](#)