

ACTUS WORKPLACE LAWYERS

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Meaning of the common award clause which deals with RDOs that fall on a public holiday

In dealing with a dispute between the United Workers' Union and Mars Petcare, Deputy President Gostencnik of the FWC considered the meaning of clause 37.3 (Rostered day off falling on a public holiday) in the *Food, Beverage and Tobacco Manufacturing Award 2020*. Similar clauses are in various other awards, including the *Manufacturing and Associated Industries and Occupations Award 2020*.

In a [decision](#) of 4 April 2023, Gostencnik DP decided that the employees on a night shift which commenced at 11pm on Monday and continued until 7am on Tuesday were not entitled to the benefits of clause 37.3(a) (i.e. an extra 7.6 hours' pay, 7.6 hours of extra annual leave or a substitute day off) when a public holiday falls on a Monday. The employees were not rostered to work on Sunday night and therefore they only worked one hour on the public holiday.

The Deputy President's reasoning was that clause 37.3 is "is not concerned with any day on which an employee does not work" but rather "is concerned with a particular species of day off – a rostered day off". In his decision he gave two examples of rostered day off systems to which clause 37.3 would apply. Both examples involved employees working 19 x 8 hour days and having one day off within each 28-day period.

Actus Workplace Lawyers is able to provide detailed assistance with shiftwork issues. Please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.