

ACTUS WORKPLACE LAWYERS

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‘Short shift’ clauses in awards and enterprise agreements

A recent decision of the Fair Work Commission highlights the importance of employers being mindful of ‘short shift’ clauses in awards and enterprise agreements, when structuring hours of work arrangements.

The case was pursued by the CFMEU and related to two employees employed under the *Dry Cleaning and Laundry Award 2020*. The employees worked their 7.6 ordinary hours between 6.00am and 2.06pm, Tuesday to Friday, but worked between 5.00am and 1.06pm on Mondays, to enable them to check and start up machinery before the other employees started work.

The Award contains a ‘short shift’ clause which requires penalty rates of 150% for the first three hours and 200% thereafter, to be paid to laundry employees who work on morning, afternoon or night shifts which do not continue for at least 5 successive shifts.

Given the 5.00am start time, the work on Mondays fell within the definition of a ‘morning shift’. In the Award, a ‘morning shift’ for laundry employees is defined as a shift commencing before 6.00am.

Deputy President Coleman of the FWC decided ([\[2024\] FWC 1400](#)) that the two employees had, once a week for around five years, worked on a shift that did not continue for five successive shifts. The employer was required to pay the 150% and 200% penalty rates for each Monday shift the employees worked during the five year period.

The case highlights the importance of employers taking care when structuring hours of work arrangements for employees.

‘Short shift’ clauses have a long history in the award system. The penalties in these clauses typically relate to circumstances where a ‘shift’ does not continue for the relevant minimum period, not to the work patterns of individual employees. For example, if an employee implemented an afternoon shift for three days, the ‘short shift’ penalty would typically apply but it would not apply to an employee transferred to an ongoing afternoon shift for three days. See this Actus Workplace Lawyers’ news article: [FWC ‘short shift’ decision will have implications for many industries](#), 20 January 2023).

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