



May 1, 2025

## PUBLIC HOLIDAYS – All Members

### Your Rights – & What Section 114 of the Fair Work Act Means for You

Following the recent public holiday, we have received a number of inquiries from members seeking clarification about their rights and obligations when rostered to work on public holidays. This Newsflash sets out the key provisions of section 114 of the *Fair Work Act 2009* and how it applies to shift workers in rail operations.

#### Your NES Entitlement

Under section 114(1) of the *Fair Work Act*, **you are entitled to be absent from work on a public holiday**, *unless* your employer makes a **reasonable request** for you to work.

If such a request is made, you may only refuse if either:

- the request itself is not reasonable, or
- your refusal is reasonable in the circumstances.

#### Factors that will be considered

Whether a request or a refusal is reasonable depends on several factors, including:

- the nature of your work and the employer's operational requirements (e.g. safety, service delivery in rail operations);
- your personal circumstances, such as family responsibilities;
- whether you could reasonably expect to be asked to work on the public holiday;
- whether you receive penalty rates or other compensation for working;
- your employment type (e.g. shift work, full-time, part-time);
- the amount of notice given by the employer;
- the amount of notice you provide in refusing the request; and
- any other relevant matter.

#### Implications for Train crew as Shift Workers

Given the 24/7 nature of the rail industry, many members are regularly rostered on public holidays. While section 114 protects your right to be absent, it also recognises the operational demands of industry.

Following the *CFMEU v OS MCAP Pty Ltd* [2023] FCAFC 51 decision, the application of s114 has been considered in a recent decision involving train crew in the rail sector (*AFULE v Aurizon* [2023]) it shows how the Fair Work Commission balances personal commitments like family or religion against



operational needs. In that case, the Commission upheld the employer's position, noting the essential nature of rail operations.

We encourage members to ensure any personal circumstances relied on are genuine and clearly communicated in your request to management.

#### **Need Advice?**

If you have concerns about how section 114 has been applied to you, or if you believe your refusal to work was reasonable and has not been respected please get in touch with your Union Delegate or Organiser.

For those interested a copy of the case can be found here

[Australian Federated Union of Locomotive Employees \(009Q\) v Aurizon Operations Ltd - \[2023\] FWC 3473 | Fair Work Commission](#)

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