

Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466

<https://lawcasesummaries.com/knowledge-base/clyde-engineering-co-ltd-v-cowburn-1926-37-clr-466/>

Facts

- The *Forty-Four Hours Week Act* 1925 (NSW) provided that workers under a Commonwealth award which stipulated a working week longer than 44 hours should be paid their full wages if they had worked for 44 hours.
- Cowburn was a person who worked longer than 44 hours. Cowburn worked for the Commonwealth.
- The Commonwealth award stated that if a worker worked less than 48 hours, they would have their pay deducted for non-attendance.
- Clyde Engineering Co Ltd deducted an amount from Cowburn for only working a 44 hour week. Cowburn challenged this. The resulting proceedings ended up in the High Court.

Issues

- Was the State statute inconsistent with the Commonwealth statute, as per section 109 of the Constitution?

Held

- The High Court held that the NSW statute was inconsistent with the Commonwealth award under section 109 of the Constitution.
- Knox CJ and Gavan Duffy J held that where one statute confers a right, and the other takes away the right, even if the right may be waived or abandoned, there is an inconsistency; the State law is then invalid to the extent of the inconsistency.

Full Text

The full text is available here: <http://www.austlii.edu.au/au/cases/cth/HCA/1926/6.pdf>

Law case summary from www.lawcasesummaries.com