



BURDEN OF PROOF IN WORKING TIME CASES*

Two recent decisions of the Labour Court being DWT1660 and DWT1661 while involving the same employer a useful in setting out the approach of the Labour Court where there are no records.

In that case the Court stated:

“The Court has examined the information provided for both sides. The Court is also aware that the Complainant did not keep records within a meaning of Section 25 of the Act. Accordingly the onus of proving compliance with the Act lays with the Respondent (the employer)”.

In working time cases some representatives, for employers contend that following the case of Antanas and Nolan Transport Limited that the Burden of Proof is on the employee to set out times and dates. This is not our understanding of the Act or that decision. It is a matter, in that decision, for the employee bringing a claim to set out matters with sufficient particularity for the employer to know in broad terms what the complaint is.

It would be sufficient for an employee to say that normally about once or twice a weeks the employee did not receive 11 hour rest between finishing and starting work the next day and this could happen on any day during the week. It would be sufficient for the employee to say that the employee on a regular or an irregular basis did not always receive a 30 minute break and to set out how often on a weekly or monthly basis this would not happen.

There is no obligation on an employee to maintain records. Some employees do. The employee bringing a claim can only produce such records or documents that they have themselves. The obligation to maintain records in accordance with Section 25 of the Act rests on the employer. The recent cases before the Labour Court have confirmed this.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**