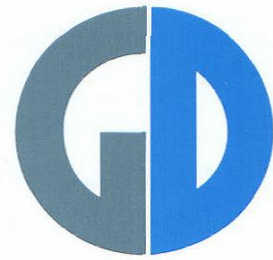


Gun & Davey

Covered



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COVERED CASES

BIG NEWS ON OVERTIME

PHILLIS JD 64/1999

The Full Bench of the Tribunal certainly turned established overtime case law on its head when it handed down the decision of Phillis JD64/1999 on 22 June 1999.

The Full Tribunal paid no heed to abundant precedent on this issue and made clear that this decision was specifically intended to “wipe the slate clean”.

In short, to adopt the language of the Tribunal (at page 8), the outcome of the decision is that “*the wholesale manufacture of patterns of uniformity, by for example, ignoring hours worked beyond a common dominator so as to enable a pattern of uniformity to be found by reference to that common denominator*” is no longer sanctioned.

The Tribunal had regard to Hansard in interpreting what is meant by the words “*substantially uniform as to the number of hours of overtime worked*” in Section 4(8)(a)(ii), and has at long last afforded those words the strict interpretation they were intended to be given.

The Tribunal stated (at page 9) that, “*Parliament must have contemplated that there would be cases in which overtime has been a regular feature of a worker’s employment so as to form part of his or her expected income in undertaking particular duties for an employer that does **not** feature in the calculation of average weekly earnings for the purposes of the Act.*”

It found that hours of overtime worked must not be unpredictable or fluctuate dramatically.

It would therefore appear that the Tribunal is only prepared to entertain very slight deviations as to number of hours worked within a particular pattern to satisfy the test of *substantially uniform*.

Recommendation:

We strongly recommend that you scrutinise overtime patterns and the number of hours worked within those patterns carefully, throw out the “band of hours” approach postulated by Pribetic Glass -v- Giles [refer to Gun & Davey – Covered Issue 6 (p6)] and insist on hours that bear a close resemblance before you conclude that Section 4(8)(a)(ii) is satisfied.

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