

NORTHERN, TARANAKI, WELLINGTON, WESTLAND, CANTERBURY, AND OTAGO AND SOUTHLAND **BAKERS AND PASTRYCOOKS AND THEIR LABOURERS.**—ENFORCEMENT

In the Court of Arbitration of New Zealand, Wellington Industrial District.—In the matter of the Industrial Conciliation and Arbitration Act, 1925, and its amendments; and in the matter of the Northern, Taranaki, Wellington, Westland, Canterbury, and Otago and Southland Bakers and Pastrycooks' and Their Labourers' award, dated the 10th day of August, 1938, and recorded in 38 Book of Awards 2049; and in the matter of an action between Percy Henry Kinsman, Inspector of Awards, Wellington, plaintiff, and Denhard Bakeries, Ltd., 194 Adelaide Road, Wellington, defendant. Hearing, Wellington, 29th October, and 20th November, 1946. *P. H. Kinsman*, plaintiff, in person; *J. F. B. Stevenson*, for defendant.

STATEMENT OF CLAIM

THE plaintiff claims to recover from the defendant the sum of £10 as a penalty for a breach of the Northern, Taranaki, Wellington, Westland, Canterbury, and Otago and Southland Bakers and Pastrycooks' award, dated the 10th day of August, 1938.

The following are particulars of the said breach:—

The defendant, being a party bound by the said award, did, during the week ending 19th May, 1946, employ J. O'Brien, V. Miller, S. Jakish, J. Adams, S. Greathead and V. Hare as bakers, and did fail to pay them the minimum rate prescribed by clause 3 (a) of the aforementioned award, and its amendment, dated the 13th June, 1945.

JUDGMENT OF THE COURT, DELIVERED BY TYNDALL, J.

This is a claim for a penalty in respect of an alleged breach of the Northern, Taranaki, Wellington, Westland, Canterbury, and Otago and Southland Bakers and Pastrycooks' award (38 Book of Awards 2049; 45 Book of Awards 742).

The defendant company operates a modern automatic bakery, and the workers mentioned in the statement of claim perform certain functions in connection with the plant.

Automatic bakeries are covered by a special code set out in clause 14 of the award. The clause is a long-standing one, and was drawn up before the introduction into the Dominion of the type of plant installed by the defendant.

After hearing a considerable amount of evidence and viewing the plant in operation, we are of the opinion that the worker who attends to that portion of the equipment known as the moulding-machine is a baker within the meaning of the artificial definition set out in clause 14 (b) of the award.

The worker, S. A. Jakish, who is shown to have been substantially employed on the moulding-machine during the period mentioned in the statement of claim, was paid as a baker's labourer, and should have been paid the rate prescribed for a baker.

A breach of the award in respect of the employment of this worker is therefore recorded, but the circumstances do not call for the imposition of a penalty.

With regard to the other workers mentioned in the claim, in view of the history of the clause, and because of its ambiguity so far as its application to the class of plant operated by the defendant company is concerned, we have some doubt as to whether the work done by the said workers brings them within the scope of clause 14 (b). The defendant company must be given the benefit of that doubt.

Mr. Monteith is not in agreement, and his dissenting opinion follows.

Dated this 20th day of December, 1946.

[L.S.]

A. TYNDALL, Judge.

DISSENTING OPINION OF MR. MONTEITH

I dissent.

The Bakers and Pastrycooks' award has special provisions applying to automatic bakeries. The work of a "baker" is contained in clause 14 (b) (i), and the part of the clause which affects this case reads as follows:—

Baker.—The work of a baker shall include the preparation of flour and dough for the breadmaking machinery, attendance to the machine while in motion, and the cleaning and lubricating of such machinery

The vital words are "attendance to the machine while in motion."

I am in agreement that the work of S. A. Jakish comes within this clause, and so a breach must be recorded; but the other men mentioned in the claim also perform work which comes within this clause. While this machine is in motion it must have the attendance of two other men, who are unassisted.

The special provisions for automatic bakeries set out in clause 14 (a) the definition of an automatic bakery as one in which at least three-fourths of the work is done by machinery. Here we have one of the most modern plants in New Zealand, but because the workers may benefit in this instance and lost in another which is at the other extreme is no reason why a special dispensation should be made here. Any one can see, as I have seen, the other two men in attendance while the machine is in motion, and they are unassisted in their work.