
**UTAH - WILLIAMSON - BURNETT JOINT VENTURE—EXEMPTION FROM
VARIOUS AWARDS**

In the Court of Arbitration of New Zealand—In the matter of the Industrial Conciliation and Arbitration Act 1954; and in the matter of applications by the Utah-Williamson-Burnett Joint Venture for total exemption from several awards; Tuesday, the 19th day of November 1963.

IN pursuance and exercise of the powers conferred on the Court by section 154 (3) of the Industrial Conciliation and Arbitration Act 1954, total exemption from the undermentioned awards is hereby granted to the employer known as the Utah-Williamson-Burnett Joint Venture in so far as the said awards relate to workers

employed on contract number 4545-100 between Her Majesty the Queen and the employer involving the construction of the tailrace tunnel and appurtenant works including the Wilmot Pass Road required for the Manapouri power project; and subject to the following condition, namely, that an industrial agreement covering the employment of workers on the aforementioned contract shall be prepared, executed, and filed in accordance with the provisions of section 103 of the Industrial Conciliation and Arbitration Act 1954, and it is ordered further that the exemption hereby granted shall operate on and from the date upon which the aforementioned industrial agreement is filed with the Clerk of Awards at Dunedin:

- New Zealand (except Northern Industrial District) Bricklayers Award, dated the 3rd day of September 1962, and recorded in 62 Book of Awards 1473.
- New Zealand Carpenters and Joiners and Joiners' Machinists Award, dated the 22nd day of November 1961, and recorded in 61 Book of Awards 1601.
- Northern, Taranaki, Wellington, Canterbury, and Otago and Southland Cleaners, Caretakers, Lift Attendants, and Watchmen Award, dated the 2nd day of October 1962, and recorded in 62 Book of Awards 1744.
- New Zealand Coach and Motor-Body Builders' Employees Award, dated the 6th day of March 1963, and recorded in 63 Book of Awards 321.
- New Zealand Motor and Horse Drivers Award, dated the 26th day of October 1962, and recorded in 62 Book of Awards 1857.
- Northern, Taranaki, Wellington, and Otago and Southland Electrical Workers Award, dated the 13th day of September 1963, and recorded in 63 Book of Awards . . .
- New Zealand Enginedrivers, Firemen, and Greasers (General Section) Award, dated the 23rd day of July 1963, and recorded in 63 Book of Awards . . .
- Northern, Wellington, Canterbury, and Otago and Southland Boilermakers Award, dated the 31st day of October 1963, and recorded in 63 Book of Awards . . .
- New Zealand Metal Trades Employees Award, dated the 1st day of May 1962, and recorded in 62 Book of Awards 801.
- New Zealand (except Westland) Factory Engineers Award, dated the 28th day of February 1962, and recorded in 62 Book of Awards 129.
- Otago and Southland Metal Workers' Assistants Award, dated the 29th day of August 1963, and recorded in 63 Book of Awards . . .
- New Zealand Private Hotel Employees Award, dated the 22nd day of May 1963, and recorded in 63 Book of Awards . . .
- Gisborne, Wellington, Marlborough, Nelson, Westland, Canterbury, and Southland Building, Quarries, Contracting, Civil Engineering, Constructional and Allied Industries Labourers and Other Workers Award, dated the 8th day of November 1962, and recorded in 62 Book of Awards 1985.
- Otago and Southland Laundry Workers, Dyers, and Drycleaners Award, dated the 28th day of August 1963, and recorded in 63 Book of Awards . . .
- New Zealand Motor Trade Employees Award, dated the 10th day of June 1963, and recorded in 63 Book of Awards . . .
- New Zealand (except Wellington and Manawatu) Painters and Decorators Award, dated the 6th day of September 1962, and recorded in 62 Book of Awards 1505.
- Otago and Southland Plasterers, Fibrous Plasterers, and Tile Fixers Award, dated the 29th day of August 1963, and recorded in 63 Book of Awards . . .

- New Zealand Plumbers and Gasfitters Award, dated the 6th day of September 1962, and recorded in 62 Book of Awards 1441.
- New Zealand (except Westland) Stonemasons Award, dated the 4th day of June 1963, and recorded in 63 Book of Awards . . .
- New Zealand Storemen and Packers Award, dated the 1st day of October 1963, and recorded in 63 Book of Awards . . .
- Otago and Southland Roofers, Tilers, Slaters, and Floorers Award, dated the 5th day of September 1955, and recorded in 55 Book of Awards 1242.
- New Zealand (except Marlborough, Nelson, and Westland) Timber Workers Award, dated the 1st day of July 1963, and recorded in 63 Book of Awards . . .
- New Zealand (except Marlborough) Tinsmiths and Sheet-Metal Workers Award, dated the 19th day of December 1961, and recorded in 61 Book of Awards 1889.

A. TYNDALL, Judge.

MEMORANDUM

The Court has before it applications for total exemption from 23 awards. The applications were filed on behalf of the Utah-Williamson-Burnett Joint Venture between 24 July and 5 August 1963. After an initial hearing on 9 and 10 September at Wellington the Court issued on 28 September 1963 (63 Book of Awards . . .) an interim judgment in which it stated that it was satisfied that uniformity of conditions of employment on the Manapouri project was desirable, and that the making of a comprehensive agreement covering all manual workers to be employed by the contractors would be in the best interests of the country. Further, it expressed the opinion that such an agreement should be reached if possible by negotiation between the contractors and the various workers' unions and associations which are original or subsequent parties to the awards from which exemption is sought, or at least with those workers' organisations which have a major interest in the project. The Court indicated if an agreement were reached and its terms submitted to it, it would be prepared to consider total or partial exemption from such awards and upon such conditions as it deemed fit in the circumstances. Following upon the Court's suggestion the Federation of Labour took certain steps on behalf of its interested affiliations with the object of reaching some agreement with the joint venture.

On 30 October 1963 a draft agreement covering the employment of workers on the Manapouri project was presented to the Court, and at the same time Mr Skinner, President of the Federation of Labour, acting as the authorised agent of the industrial organisations of workers listed immediately below advised the Court that as a result of the agreement those organisations withdrew their opposition to the granting of the exemptions.

- Otago and Southland General Electrical Workers Industrial Union of Workers.
- Otago and Southland Operative Plasterers Industrial Union of Workers.
- Otago and Southland Coach Workers and Wheelwrights Industrial Union of Workers.
- Otago Metal Workers' Assistants Industrial Union of Workers.
- New Zealand Plumbers, Gasfitters and Related Trades Industrial Union of Workers.
- New Zealand Enginedrivers, Firemen, Greasers and Assistants Industrial Union of Workers.
- New Zealand Timber Workers Industrial Union of Workers.
- New Zealand Carpenters and Joiners and Joiners' Machinists Industrial Association of Workers.
- New Zealand Federated Painters and Decorators Industrial Association of Workers.

New Zealand Federated Boilermakers, Structural Metal Fabricators and Assemblers, Metal Ship and Bridge Builders Industrial Association of Workers.
New Zealand Federated Hotel, Hospital, Restaurant, and Related Trades' Employees Industrial Association of Workers.

New Zealand Federated Storemen and Packers (other than in Retail Shops) and Warehouse Employees (other than Drivers and Clerks) Industrial Association of Workers.

The following industrial organisations of workers maintained their opposition:

New Zealand Federated Labourers and Related Trades Industrial Association of Workers.

Southland Labourers and Related Trades Industrial Union of Workers.

New Zealand Engineering, Coachbuilding, Aircraft and Related Trades Industrial Union of Workers.

New Zealand (except Canterbury, Marlborough, Nelson and Westland) Electrical Workers Industrial Association of Workers.

Mr Goddard for the New Zealand Federated Labourers and Related Trades Industrial Association of Workers, and the Southland Labourers and Related Trades Industrial Union of Workers, asked for an adjournment of the hearing till the following week on the grounds of inconvenience and because his clients had not had an opportunity of considering the terms of the draft agreement. After copies of the agreement had been made available to all interested parties, the Court granted an adjournment until 10 a.m. on 1 November 1963. After a full day's hearing on that date the Judge made the following statement:

"My colleagues and I have discussed the position. It is a matter of great regret that the Southland Labourers' Union and the New Zealand Engineers' Union did not participate in the negotiations for an agreement. The grievances of the objecting unions have been thoroughly ventilated and their views as to the terms of the proposed agreement have been disclosed. In the interests of the country and everyone directly concerned, we think every endeavour should be made to reach the type of agreement suggested in the Judgment of the Court. There seems to be some doubt as to the application of clause 5 of the agreement. Opportunity should be taken to clarify the intended effect of this vital clause. We think further negotiations should be urgently initiated and I propose to adjourn this hearing to enable this to be done. The applications for exemption have not yet been rejected, nor have they finally been disposed of."

The hearing was resumed on 14 November 1963. After further negotiations between the interested parties had taken place, Mr Luxford for the employer announced a change in clause 5 of the proposed agreement. Mr Skinner advised the Court that the workers' organisations represented by him on 30 October and listed above fully concurred in the terms of the amended agreement. In addition he informed the Court that the New Zealand Federated Caretakers, Cleaners, Lift Attendants and Watchmen's Industrial Association of Workers and the New Zealand Road Transport and Motor and Horse Drivers and their Assistants Industrial Association of Workers also concurred.

Mr Darbyshire on behalf of the New Zealand Engineering, Coachbuilding, Aircraft and Related Trades Industrial Union of Workers and the Otago and Southland General Electrical Workers Industrial Union of Workers advised the Court that the agreement was acceptable to his organisations, and that their opposition to the granting of the exemptions was withdrawn.

Mr Dunn appearing for the New Zealand Federated Labourers and Related Trades Industrial Association of Workers and its affiliate the Southland Labourers and Related Trades Industrial Union of Workers maintained objection to the

granting of exemption to the joint venture on grounds previously advanced which are dealt with below, and also because the terms of the tentative agreement in its present form were unacceptable to the organisations.

In the course of his address at the initial hearing Mr Dunn made the following submission in regard to the right of the employer to apply for exemption under section 154 of the Industrial Conciliation and Arbitration Act 1954:

I have found a little difficulty, sir, in trying to formulate a view as to the meaning of subsection (2); but it does appear that the whole section is inapplicable to a case in which the award otherwise provides. It seems clear that in nearly every award, including the awards with which I am particularly concerned, there is express provision as to the effect of the award, the binding of the award upon subsequent parties. Those express provisions vary in wording, but not in real intention, from the section. But it does appear that if meaning is to be given to subsection (2) the position is that if an award makes specific provision for subsequent parties in terms differing from those set out in the Act, then the whole section becomes inapplicable to that award and consequently, though this may not have been intended, it would appear that no applicant can in respect of such an award take advantage of subsection (3) which is the authority for this type of application. It would be different if subsection (2) had said that, where it is otherwise provided in an award, subsection (1) of this section was not to apply. But the Act does not say that. It says that the whole section shall cease to apply in such a case.

We do not agree with Mr Dunn's contention. The "blanket clause" which is common to many awards substantially repeats the wording of subsection (1) of section 154. We think the laudable intention of the "blanket clause" is to be informative of the effect of subsection (1), not to provide "otherwise" in the award. Mr Luxford referred the Court to Grieve's Handbook on Industrial Conciliation and Arbitration Act 1954 pages 67 to 69 inclusive, in which there appear explanatory notes on sections 154 and 155. We see no reason to differ from those notes.

Mr Dunn also submitted that the joint venture is not an employer within the meaning of section 154 because two of the parties constituting the joint venture are already original parties to other awards involved in the present application, e.g., Williamson Construction Co. Ltd. is an original party to the Gisborne, Wellington, Marlborough, Nelson, Westland, Canterbury, and Southland Building, Quarries, Contracting, Civil Engineering, Constructional and Allied Industries Labourers and Other Workers Award (62 Book of Awards 1985) and not being a subsequent party it is argued that the company cannot invoke section 154 (3). Paragraph T2.6 of the conditions of tender for contract No. 4545-100 of the Manapouri power project reads:

Tenders from more than one individual, firm or corporation acting as a joint venture or partnership will be accepted provided that the following requirements are complied with:

- (1) A Management Sponsor who shall have complete authority to act for the joint venture or partnership in all matters relating to the Contractor's responsibilities under the Contract shall be nominated at the time of tendering. The authority of the Management Sponsor shall be evidenced by a Power of Attorney executed by all members of the joint venture or partnership and submitted to the Owner with the Tender.
- (2) The Tender shall be signed by the Management Sponsor acting in accordance with the said Power of Attorney.
- (3) The members of the joint venture or partnership shall be jointly and severally liable for the performance of the Contract.
- (4) The Management Sponsor shall have had recent satisfactory experience in construction of similar projects in New Zealand or countries away from its home base.

Paragraph T2.12 reads:

Association with New Zealand Construction Organisation

Tenderers should note that although not a prerequisite for tendering, it is desirable that the successful tenderer be associated with an acceptable New Zealand construction organisation and should state in the tender what arrangements, if any, have been made in this regard.

The contract documents state that the contract is between Her Majesty the Queen and Utah Construction and Mining Co., W. Williamson Construction Co. Ltd., Burnett's Motors Ltd., a joint venture.

The joint venture is referred to throughout the contract documents as the "contractor". Paragraph 25.0 of the agreement embodied in the contract documents states that "the contractor shall provide and pay for all materials, construction plant, labour, . . ."

Paragraph 28.0 of the agreement reads:

The contractor shall be an independent contractor in the performance of the work and shall have complete charge of the contractor's personnel engaged in the performance of the work.

Workers are at present being employed on the contract by the contractor.

In section 2 (1) of the Industrial Conciliation and Arbitration Act 1954 unless the context otherwise requires an "employer" means a person employing any worker or workers. A "person" is declared to include a corporation sole, and also includes a body of persons, whether incorporated or not. A "worker" means any person of any age of either sex employed by any employer to do any work for hire or reward.

We are satisfied that the joint venture is an employer within the meaning of the statute. We are also satisfied that the joint venture as an employer was not bound as an original or added party to any of the awards at the date of filing of the application, and that since operations on the contract have commenced it has become bound as a subsequent party to a number of the awards by virtue of section 154 (1) of the statute and was therefore entitled to make application for exemption under section 154 (3).

It is of interest to point out several cases in which groups of employers have combined to undertake individual major projects in New Zealand during the last 11 years. On 12 December 1952 the Court granted total exemption from 21 awards to an employer named Messrs Cubitts and Zschokke, a contractor for the completion of the Roxburgh power project (52 Book of Awards 2429). Following upon the granting of the exemption an industrial agreement was made on 13 February 1953 between Messrs Holland and Hannen and Cubitts Ltd. and Societe Anonyme Conrad Zschokke being contractors to the Ministry of Works in respect of the Roxburgh power project of the one part and the New Zealand Workers Industrial Union of Workers of the other part (53 Book of Awards 33).

On 13 July 1951 the Rimutaka Tunnel Contract Tunnellers and Other Workers Industrial Agreement was made between Morrison-Knudsen Co. (New Zealand) Ltd. and Downer and Co. Ltd., in partnership, of the one part and the Wellington, Nelson, Westland and Marlborough Local Bodies, Other Labourers and Related Trades Industrial Union of Workers (51 Book of Awards 1537).

On 23 August 1961 the Fletcher-Kaiser Employees Lyttelton Tunnel Contract Industrial Agreement was made between the Canterbury General and Builders and Related Trades Industrial Union of Workers of the one part and the contracting partnership of the Fletcher Construction Co. Ltd., Wellington and Kaiser Engineers and Constructors Inc. of Oakland, California as the employer of the other part, (61 Book of Awards 1121). At the date of making of the agreement the Gisborne, Wellington, Marlborough, Nelson, Westland, Canterbury, and Southland Building, Quarries, Contracting, Civil Engineering, Constructional and Allied Industries Labourers and Other Workers Award (61 Book of Awards 225) which purports to cover tunnelling work was in operation and its currency had not expired. The Fletcher Construction Co. Ltd., Wellington, was named in the award as an original party, but apparently the workers' union which entered into the agreement

regarded the contracting partnership as a separate entity from the Fletcher Construction Co. Ltd. There is however no record of any exemption from the award having been applied for or granted.

Dealing with the application now before the Court we have given anxious consideration to the whole of the evidence and submissions placed before us and we have decided unanimously to grant conditional total exemption to the joint venture for the reasons below:

- (a) Following upon the tentative agreement reached between the joint venture and 15 industrial unions and associations of workers which are directly affected, the said organisations of workers have withdrawn all opposition to the granting of exemption.
- (b) The Federation of Labour supports the granting of exemption. This organisation is mentioned because its existence is recognised in recent legislation dealing with the making of composite agreements.
- (c) The terms of the tentative agreement which has been reached are, in the Court's opinion, sufficiently fair and reasonable in all the circumstances surrounding the contract to ensure the protection of workers employed thereon, and to justify the granting of exemption.
- (d) The membership rules of the New Zealand Workers Industrial Union of Workers is wide enough in scope to cover road construction workers and hydro-electric construction workers who will constitute the major portion of the workers employed on the contract.
- (e) Within the group of workers' organisations which have associated themselves with the tentative agreement, no occupation covered by the awards from which exemption is being granted will be left without union coverage.
- (f) At any time after the industrial agreement has been executed, filed and brought into force it appears to be open to the Southland Labourers and Related Trades Industrial Union of Workers to take action to become party to the agreement pursuant to section 104 of the Industrial Conciliation and Arbitration Act 1954.

A. TYNDALL, Judge.

COMMENT BY MR GRANT

Marcus Aurelius could afford to be a philosopher—he was an emperor, but our wage-workers of today have too short and too difficult a working life for other than the direct approach which means immediate gains.

I am gravely concerned at the division of opinion and action in the trade union movement, particularly concerned because of the important fact that it is the best interests of the workers which are being affected.

Perhaps the quickest way to injure a trade union official is to make him unsure of himself and thus gravely affect his steadiness and competency. There has been too much criticism one of the other almost ever since this project at Manapouri has been introduced.

It appears to me that the time is opportune to again remind the trade unions that they must unite, putting aside all ideological and other considerations. The trade union movement cannot afford the luxury of division if it wants to keep its head on its shoulders. It must provide an effective leadership for the workers, who of course, will have the last word. In this connection I draw to the attention of the Southland Labourers and Related Trades Industrial Union of Workers to the concluding paragraph (f) in this decision.