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**BULLER HOSPITAL BOARD EMPLOYEES—AWARD**

In the Court of Arbitration of New Zealand, Westland Industrial District—In the matter of the Industrial Conciliation and Arbitration Act 1954; and in the matter of an industrial dispute between the Wellington, Nelson, Westland, and Marlborough Local Bodies, Other Labourers, and Related Trades Industrial Union of Workers (hereinafter called “the union”) and the undermentioned board (hereinafter called “the employers”):

Buller Hospital Board, Westport.

THE Court of Arbitration of New Zealand (hereinafter called “the Court”), having taken into consideration the matter of the above-mentioned dispute, and having heard the union by its representatives duly appointed, and having also heard such of the employers as were represented either in person or by their representatives duly appointed, and having also heard the witnesses called and examined and cross-examined by and on behalf of the said parties respectively, doth hereby order and award:

That, as between the union and the members thereof and the employers and each and every of them, the terms, conditions, and provisions set out in the Schedule hereto and of this award shall be binding upon the union and upon every member thereof and upon the employers and upon each and every of them, and that the said terms, conditions, and provisions shall be deemed to be and they are hereby incorporated in and declared to form part of this award; and, further, that the union

and every member thereof and the employers and each and every of them shall respectively do, observe, and perform every matter and thing by this award and by the said terms, conditions, and provisions respectively required to be done, observed, and performed, and shall not do anything in contravention of this award or of the said terms, conditions, and provisions, but shall in all respects abide by and perform the same. And the Court doth hereby further award, order, and declare that any breach of the said terms, conditions, and provisions set out in the Schedule hereto shall constitute a breach of this award, and that a penalty as by law provided shall be payable by any party or person in respect thereof. And the Court doth further order that this award shall take effect as hereinafter provided and shall continue in force until the 22nd day of December 1966 and thereafter as provided by section 152 of the Industrial Conciliation and Arbitration Act 1954.

In witness whereof the seal of the Court of Arbitration hath hereto been affixed, and the Judge of the Court hath hereunto set his hand, this 22nd day of December 1965.

[L.S.]

A. P. BLAIR, Judge.

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SCHEDULE

*Industry to Which Award Applies*

1. This award shall apply to the Buller Hospital Board employees who are covered by the provisions of this award.

*Hours of Work*

2. The ordinary hours of work shall not exceed 40 per week or eight per day, to be worked between 7.30 a.m. and 5 p.m. on five days of the week, Monday to Friday, both days inclusive.

*Wages*

3. (a) Head gardener or worker in charge appointed as such, £17 6s. 7d. per week.  
 (b) Worker substantially employed in the propagation and/or cultivation of plants, shrubs, or vegetables, £16 8s. 8d. per week.  
 (c) Groundsmen or other general workers, £14 5s. 4d. per week.

*General Provisions*

4. (a) An allowance of 3s. 4d. per day or part of a day shall be made to men working inside boilers, flues, and combustion chambers and for other unusually dirty work. Flue work shall be restricted to six hours daily.

(b) Workers required to relieve the incinerator attendant shall be paid the higher rate for the time they are so relieving, based on an hourly computation.

(c) Workers employed clearing or repairing blocked or defective sewers and foul drains or when required to come in contact with faecal or sewerage matter shall be paid 1s. 8½d. per hour with a minimum payment of 3s. 4d. per day, such payment to be additional to the wages prescribed herein.

(d) Youths may be employed by the board on a mutual arrangement between the board and the union.

(e) This award shall not operate so as to reduce the wages of any worker at present employed by the board or to restrict the privileges granted by the board and enjoyed by any employee at the time of the coming into force of this award.

(f) Clogs shall be supplied to men working in combustion chambers, backends, and main flues.

(g) Workers who are required to work at a place other than their usual place of employment shall travel to and fro in the employer's time, or shall be paid for time occupied in travelling where such is done in their own time. Such workers shall also be reimbursed all moneys actually expended in fares travelling to and from such place of work.

(h) Workers shall be paid 8d. per hour extra whilst working with a scythe or motor-mower, with a minimum payment of 2s. 8d. per day.

(i) The employer shall provide each worker with one pair of overalls annually. The overalls supplied shall be laundered weekly at the employer's expense.

#### *Service Bonus*

5. Workers who have been in the employ of the board for three years, or who may subsequently attain a service of three years shall be paid an additional payment as follows:

				Per Week
				£ s. d.
After 3 years' service	..	..	..	0 9 10
After 5 years' service	..	..	..	0 13 1
After 10 years' service	..	..	..	0 16 6
After 15 years' service	..	..	..	0 19 9
After 16 years' service	..	..	..	1 1 2
After 17 years' service	..	..	..	1 2 4
After 18 years' service	..	..	..	1 3 8
After 19 years' service	..	..	..	1 4 11
After 20 years' service	..	..	..	1 6 3

#### *Overtime*

6. (a) All work done outside of or in excess of the hours prescribed in clause 2 hereof shall be considered overtime and shall be paid for at the rate of time and a half for the first three hours and double time thereafter: Provided that all time worked after noon on Saturday shall be paid for at double time rates.

(b) Where workers are called upon to work overtime on any day and have not been notified by the employer on the previous day that they are required to do so, 5s. 7d. shall be allowed to such workers for meal money.

(c) The employer may, in lieu of the 5s. 7d. provided for herein, supply the workers with a hot meal.

#### *Statutory Holidays*

7. (a) Workers shall receive and be paid for the following holidays: New Year's Day, Good Friday, Easter Monday, the birthday of the reigning Sovereign, Labour Day, Christmas Day, Boxing Day, and two other days to be mutually agreed upon. The employer shall notify the union of the two days agreed upon.

(b) Except as otherwise provided, any work done on any of the above holidays or on Sundays or Anzac Day shall be paid for at double time rates.

(c) The employer shall pay wages for the named holidays to all workers performing work coming within the scope of this award who have been employed by him at any time during the fortnight ending on the day on which the holiday occurs.

(d) The provisions of the Public Holidays Act 1955, and its amendments, shall be deemed to be incorporated in this award.

(e) A minimum payment of three hours at schedule overtime rates shall be made for any work performed on any Saturday, Sunday, or holiday.

*Annual Leave*

8. (a) The provisions of the Annual Holidays Act 1944 shall apply to workers covered by this award.

(b) After five years' service, employees shall be entitled to three weeks' annual leave. For the purpose of service, similar service with any hospital board shall be counted.

*Sick Leave*

9. Employees shall receive one week's sick leave on full pay for each year of service in the employ of the board, with a maximum of 24 weeks' accumulated sick leave.

*Variation of Duties*

10. Nothing in this award shall prevent any worker covered hereby from doing work covered by another award or agreement: provided that whilst so engaged he shall be paid at least the rate which is fixed in such other award or agreement where such rate is higher.

*Accommodation*

11. (a) The employer shall provide suitable accommodation for workers to take meals and, where practicable, to change and dry clothing. The employer shall arrange for the accommodation to be kept clean and in a hygienic condition.

(b) Ablution facilities with soap and hot water, together with a supply of clean towels, shall be provided for the use of workers.

(c) A morning and afternoon tea break of 10 minutes shall be allowed without deduction of wages.

*Termination of Engagement*

12. One week's notice of the termination of employment shall be given by the party desiring to terminate the employment or one week's wages paid or forfeited as the case may be, but nothing herein contained shall prevent an employer from summarily dismissing a worker for misconduct.

*Disputes Committee*

13. The essence of this award being that the work of the employer shall not on any account whatsoever be impeded but shall always proceed as if no dispute had arisen, it is provided that if any dispute or difference shall arise between the parties bound by this award, or any of them, as to any matter whatsoever arising out of or connected therewith and not dealt with in this award, every such dispute or difference shall be referred to a committee to be composed of two representatives of each side, together with an independent chairman to be mutually agreed upon or, in default of agreement, to be appointed by the Conciliation Commissioner for the district. Either side shall have the right of appeal to the Court against a decision of any such committee or, in the event of no decision being made, either side shall have the right to appeal to the Court upon giving to the other side written notice of such appeal within 14 days after such decision has been made known to the party desirous of appealing.

*Unqualified Preference*

14. (a) Any adult person engaged or employed in any position or employment subject to this award by any employer bound by this award shall, if he is not already a member of a union of workers bound by this award, become a member of such union within 14 days after his engagement, or after this clause comes into force, as the case may require.

(b) Subject to subclause (a) hereof, every adult person so engaged or employed shall remain a member of a union of workers bound by this award so long as he continues in any position or employment subject to this award.

(c) Every worker obliged under subclause (a) hereof to become a member of a union who fails to become a member, as required by that subclause, after being requested to do so by an officer or authorised representative of the union, and every worker who fails to remain a member of a union in accordance with subclause (b) hereof commits a breach of this award.

(d) Every employer bound by this award commits a breach of this award if he continues to employ any worker to whom subclauses (a) and (b) apply, after having been notified by any officer or authorised representative of the union that the worker has been requested to become a member of the union and has failed to do so, or that the worker having become a member of the union has failed to remain a member.

(e) For the purposes of this clause "adult person" means a person of the age of 18 years or upwards, or a person who for the time being is in receipt of not less than the minimum rate of wages prescribed for adult workers by this award.

(NOTE—Attention is drawn to section 174H of the Industrial Conciliation and Arbitration Act 1954 which gives to workers the right to join the union.)

#### *Application of Award*

15. This award shall apply only to the parties named herein.

#### *Term of Award*

16. This award, in so far as the provisions relating to the rates of wages to be paid are concerned, shall be deemed to have come into force on the 29th day of April 1965, and so far as all other provisions of the award are concerned, it shall come into force on the day of the date hereof; and this award shall continue in force until the 22nd day of December 1966.

In witness whereof the seal of the Court of Arbitration hath hereto been affixed, and the Judge of the Court hath hereunto set his hand, this 22nd day of December 1965.

[L.S.]

A. P. BLAIR, Judge.

#### MEMORANDUM

The matters settled by the Court related to wages (clause 3), general provisions (clause 4 (c) and (h)), service bonus (clause 5), and term of award.

Upon being satisfied by supporting documentary evidence that an unqualified preference provision has been agreed to by all the assessors in accordance with section 174B of the Industrial Conciliation and Arbitration Act 1954 (as enacted by the Industrial Conciliation and Arbitration Amendment Act 1961), the Court has inserted clause 14 in the award in the form in which it was agreed upon in the Council of Conciliation.

Mr Anton has invited the Court to give its opinion on the meaning and application of section 117 of the Act in relation to the facts of this case. The position is that the respondents did not file detailed counter-proposals to the applicant's claim. Instead they objected to the claims of the applicant union and "submitted as counter-proposals the terms and conditions contained in the Wellington, Nelson, Westland and Marlborough Gardeners, Labourers and Other Workers Award". The objection has been made that this is not a true counter-proposal and in any event the name of the award is incorrectly cited.

We think it must be emphasised that section 117 is a procedural section. Its purpose is to ensure that before the dispute comes before the Council of Conciliation the parties shall know the limits of their dispute and recognise the issues between them.

We do not think that the section can or should be interpreted in a narrow technical way so that what may amount to a formal error in the papers could be used by the other side as a means of preventing the dispute being dealt with. The primary purpose of the Act is to provide simple untechnical procedure whereby parties to industrial disputes can have them brought before the Council and Court for conciliation and arbitration. In our view defects in form should not necessarily invalidate the proceedings. Of course if the defect is such that the other side is prejudiced in that it cannot comprehend what the issues are, then there is some ground for complaint and in such a case the objecting party is entitled to demand a clear and explicit counter-proposal. However, in the present case although the method used by the respondent may be regarded as slightly clumsy (and included an inaccurate reference to the award) the applicant could not have been prejudiced. It was perfectly obvious what the respondent meant and what the issues were between the parties. It is important that technicalities should not stand in the way of the parties, Councils or the Court grappling with the real issues. The Act itself in section 169 gives a wide power to amend and cure formal defects "to enable a Council or the Court the more effectually to dispose of any matter before it according to the substantial merits and equities of the case". Somewhat similar provisions are embodied both in the Supreme Court and Magistrates Court procedure so that the Judicial Tribunal need waste no time in getting to the root and essence of the matter in dispute.

In our view the objection raised in this case to the form of the counter-proposals has no real substance as there was a clear indication to the applicant of the area and limits of the dispute. We also hold that it was properly within the Commissioner's discretion to accept, pursuant to section 117 (2), the "amended counter-proposals" submitted on 28 September 1965. We repeat that section 117 is in our view a procedural and machinery section to be employed as a means of presenting a real dispute between the parties before the Council or the Court. It is clearly not the intention of the legislature that it should be used for a contrary purpose.

Mr Grant is not in agreement with the decision of the majority on wage rates, and his dissenting opinion follows.

A. P. BLAIR, JUDGE.

#### DISSENTING OPINION OF MR GRANT

I dissent from this award insofar as the wage rates are concerned. In my opinion the differentials in the wage rates between the workers employed by the Buller Hospital Board and the workers covered by the Wellington, Marlborough, Nelson, and Westland Hospital Boards' Gardeners, Labourers, and Other Workers Award should have been maintained.

However, it is pleasing to observe that, notwithstanding the insistence of the employing authority in requesting some major amendments to this award, other important conditions of work have been protected by the Court.