912. AUCKLAND CARPENTERS.—DECISION *RE* APPLICATION TO ADD CLAUSE TO AWARD.

In the Court of Arbitration, Northern District (Auckland).—In the matter of the Auckland Carpenters and Joiners' Award and of an application to add a clause thereto.

DECISION OF THE COURT.

WITH respect to the application of the Auckland Branch of the Amalgamated Society of Carpenters and Joiners and the Auckland Builders and Contractors' Association, to amend the recent award by inserting therein clause 10 of the demands on the ground that it was consented to, the Court declines to accede to this request, as it has no power to alter an award, save at the request of all parties, unless it has omitted or inserted anything that was not intended to be omitted or inserted

in which case it may amend an error. With respect to the matter of the application the Court desires to make the following observations :—

1. The clause asked for runs " 10. That, except in respect of stair-building, no carpenter or joiner shall be paid by piecework, nor shall any builder or employer let his work labour only." Clause 12 of the former award, which the Court was not asked to reinsert, runs " 12. That, except . . . in respect of stair-building, no carpenter or joiner shall be paid by piecework, nor shall any builder or employer sublet his work labour only."

2. Apart from a verbal distinction which makes no difference, the difference in wording between these two clauses is to substitute the word " let " for " sublet." That difference, however, entirely alters the meaning of the clause, gives it a radically different effect, and, in fact, carries the matter beyond the jurisdiction of the Court. For this reason the Court now declines to insert it in any award.

3. We think it necessary to analyse these clauses. It is quite open to this Court to prohibit piecework, and it does so in several trades, but it is of first importance to bear in mind the distinction so often overlooked between contract and piecework. Quite recently the Court has intimated an opinion that it is not one of its functions to restrict the right of contract except in the case of master and servant. This Court has repeatedly decided that it has no jursidiction in workers' compensation cases, where the worker is not a servant, but contracts for the whole labour of a job, and the English Courts have decided the same thing.

4. On the other hand, a man who contracts not to do a whole job, but to do an undefined amount of work at a rate calculated by the piece, is a pieceworker, not a contractor ; his principal is his employer, and both are wholly within the jurisdiction of this Court. Thus, slop tailors and pressers, hosiery hands, coal-miners, &c., are commonly pieceworkers and seldom contractors. There is a great difference in this respect between coal-mining and quartz-mining, as in the latter case contracts to take out a defined block of stone are not uncommon.

5. We think that when this distinction is rightly understood, much of the objection to piecework disappears. It may be prohibited by the award, but where it is not so prohibited, it does not follow that it can be used as a means of sweating. Thus, if an award, worded in the usual way fixes say, 1s. 3d. as the hourly wage, and custom or the award prescribes weekly pay, it is always incumbent on the employer to show that he has paid his employee at that rate per hour over the period, though not calculated at that rate for each hour worked. That was decided in the case of Dunedin and Suburban Carters *v.* McIntosh (Book of Awards, Vol. v., p. 263) on which the Court has since re-

peatedly acted, and the Court is satisfied that that case correctly states the law. That case collects the various authorities on the subject of the distinction between contractors and servants.

6. It will be noticed that the common clause allows stair-building as an exception. If this means the taking of a lump-sum contract for building a stair, the exception is not really necessary, as such a contract would not be touched by the prohibition against piecework.

7. Though the Court has no power to prohibit letting contracts for labour only, it does at times insert a clause prohibiting subletting. That is a very different thing from a prohibition against letting a contract, as, if it is for the benefit of the contractor and his employee, it is not antagonistic to the interests of the person with whom the contract is made—indeed, it may generally be assumed that it is advantageous to him and to the public generally to exclude middlemen: there is less temptation to have work badly done and covered up where an intermediate profit is not made. On the other hand, a clause in general terms excluding contracts for labour only, is understood to be aimed at the public, and to prevent a man from building his own house with his own materials, letting the labour in the form of a contract. While we are bound to exclude a clause which we could not enforce, we think it as well to point out that a person who contracts to do a given piece of work "labour only," is an employer under the award if he hires labour. If he performs it all himself he is placed beyond our jurisdiction.

8. The parties have, in the alternative, since the hearing, asked us to insert clause 12 of the old award, but this was not claimed in the demand or asked for at the hearing, and cannot be done now in the absence of numerous parties who might have objected. We do not, at present, see why they should not, if they think fit, make an industrial agreement on this point, so long as it does not conflict with the award. That, of course, would only bind the parties who executed it.

Dated this 5th day of August, 1905.

FREDK. R. CHAPMAN, J., President.