(11150.) NORTHERN INDUSTRIAL DISTRICT (EXCEPT GISBORNE JUDICIAL DISTRICT) RETAIL **SHOP-ASSISTANTS**; NORTHERN INDUSTRIAL DISTRICT (EXCEPT GISBORNE JUDICIAL DISTRICT) HARDWARE SHOP-ASSISTANTS; NORTHERN INDUSTRIAL DISTRICT RETAIL CHEMISTS' ASSISTANTS; WELLINGTON INDUSTRIAL DISTRICT (EXCEPT HAWKE'S BAY) SHOP-ASSISTANTS; CANTERBURY SHOP-ASSISTANTS; CANTERBURY RETAIL CHEMISTS' ASSISTANTS; AND OTAGO AND SOUTHLAND SHOP-ASSISTANTS.—AMENDMENT OF AWARDS.

In the Court of Arbitration of New Zealand.—In the matter of the Industrial Conciliation and Arbitration Amendment Act, 1936; and in the matter of applications to amend the Northern Industrial District (except Gisborne Judicial District) Retail Shop-assistants' award, dated the 9th day of April, 1934, and recorded in Book of Awards, Vol. XXXIV, p. 160; the Northern Industrial District (except Gisborne Judicial District) Hardware Shop-assistants' award, dated the 9th day of April, 1934, and recorded in Book of Awards, Vol. XXXIV, p. 139; the Northern Industrial District Retail Chemists' Assistants' award, dated the 18th day of May, 1933, and recorded in Book of Awards, Vol. XXXIII, p. 487; the Wellington Industrial District (except Hawke's Bay) Shop-assistants' award, dated the 21st day of December, 1934, and recorded in Book of Awards, Vol. XXXIV, p. 754; the Canterbury Shop-assistants' award, dated the 3rd day of May, 1933, and recorded in Book of Awards, Vol. XXXIII, p. 387; the Canterbury Retail Chemists' Assistants' award, dated the 28th day of May, 1926, and recorded in Book of Awards, Vol. XXVI, p. 380; and the Otago and Southland Shop-assistants' award, dated the 17th day of December, 1935, and recorded in Book of Awards, Vol. XXXV, p. 1445. Mr. *A. W. Croskery* for the workers; Mr. *T. O. Bishop* for the employers.

JUDGMENT OF THE COURT, DELIVERED BY PAGE, J.

THESE are applications made under section 21 of the Industrial Conciliation and Arbitration Amendment Act, 1936, for a

reduction to 40 hours per week of the working-hours fixed by the seven awards above enumerated relating to retail shop-assistants (other than those in grocers' and butchers' shops).

The statute requires the hours of work to be fixed at 40 per week unless, in the opinion of the Court, it would be impracticable to carry on efficiently the industry if the hours of work were thus limited.

The onus of proof of impracticability lies on the employer.

The Court is divided over these applications, and the judgment that follows represents the view of the majority of the Court.

The shops covered by these applications include substantially every type of retail shop doing business in New Zealand other than grocers and butchers.

The awards at present in force fix the hours of work at 48 per week.

The applicants ask that a 40-hour week should be imposed, and that Saturday work should be eliminated.

The effect of granting such applications would be to close all such shops from Friday night till Monday morning.

Different considerations apply to applications involving the closing of retail shops on Saturdays to those that apply to applications relating to factories.

The Legislature has heretofore adopted the principle that hours of work in factories should be shorter than those in shops, and this principle has been recognized in the legislation passed during the present year.

Hours of work in factories are now limited to 40 per week (with a right to apply to the Court for extension). Hours of work in retail shops are limited to 44 per week.

There is, therefore, nothing in the Shops and Offices Act itself which requires shop-assistants to be given a working-week of less than 44 hours, or which requires the elimination of work on Saturdays.

Saturday is shown to be a busy shopping-day.

In some towns the weekly half-holiday falls in the midweek and Saturday becomes the market day of the week.

In considering the question of Saturday-closing due regard must be had to the needs of the public. These needs require shopping facilities to be available on Saturdays, and, in our opinion, it would be impracticable to carry on efficiently the industries covered by these various retail shop awards if such shops were closed throughout Saturday.

An alternative suggestion was put forward during the course of the hearing of these cases. It was suggested that the shops might be kept open on Saturdays as heretofore, but that the staffs might still be given a 40-hour week by being allowed to come on and go off duty in relays so that some

could be allowed to come to work late in the mornings and the others be allowed to go off work before closing-time in the evenings.

This method of " staggering " the hours, as it is called, has obvious disadvantages, and in the case of small shops having small staffs would be quite unworkable.

Upon a careful consideration of the whole of the evidence and of the arguments addressed to us, we are of opinion that it would be impracticable to carry on efficiently the industries involved in these applications on a 40-hour week.

We therefore make an order that the maximum number of hours (exclusive of overtime) to be worked in any week by any worker bound by any of the above-mentioned awards shall be 44, and the awards will be amended accordingly.

Work on Saturdays will be permitted.

Rates of pay prevailing on 1st September, 1936, will be adjusted in accordance with subsection (3) of section 21 of the Industrial Conciliation and Arbitration Amendment Act, 1936, so that the ordinary rates of weekly wages of any worker shall not be reduced by reason of the reduction made in the number of his working-hours.

This order will come into force on 1st day of September, 1936.

Mr. Monteith's dissenting opinion is attached.

Dated this 24th day of August, 1936.

[L.S.] E. PAGE, Judge.

DISSENTING OPINION OF MR. MONTEITH.

This case in my opinion differs greatly from the grocers' and butchers' cases because the business is not connected with perishable foods. In both those cases 98 per cent. of the employees are males, while in this case 75 per cent. are females. While both grocers and butchers have worked the maximum number of hours provided in the Shops and Offices Act and in their awards, these workers have never done so, the reason being, I believe, because so many females are employed. It is unfair to draw a comparison between what the award or the Shops and Offices Act provides and what is now ordered, because these workers have never worked the maximum number of hours provided in the Shops and Offices Act. The Court, some years ago, endeavoured to shorten the length of the working-day on the day of the late night, which amounts to 10½ hours for females.

It was contended that the shopping-hours cannot be reduced, but I note that, in Auckland, grocers are going to close at 8.30 p.m. instead of 9 p.m. on the day of the late night, which seems to throw some doubt on this contention. However, be

that as it may, shopping-hours and working-hours are two different things. To-day, in a large number of shops, workers start at different hours, and this principle can easily be extended and still give the same number of shopping-hours. It is interesting to note that the pioneer of the 40-hour week in the drapery trade in London has adopted this principle, keeping open his business for 54½ hours per week but employing his workers for not more than 40 hours per week.

One witness admitted that he gave a longer meal interval than one hour, and while I do not think this is a desirable practice, it shows that working-hours can be altered without interfering with shopping-hours.

The chain-bargain-store business has had an influence on the rest of the retail trades, which now require a greater measure of constant service from assistants.

As the Act gives the Court power to fix a limit between 40 and 44 hours, and in view of the non-perishable nature of the goods, the large number of females employed, and the 10½-hour day on the day of the late night, I believe that not more than a 42-hour week should have been awarded.