

**(11225.) NORTHERN, WELLINGTON, CANTERBURY, AND OTAGO
AND SOUTHLAND BAKERS AND PASTRYCOOKS AND THEIR
LABOURERS.—DETERMINATION OF CONCILIATION
COMMISSIONER.**

In the matter of the Industrial Conciliation and Arbitration Act, 1925, and its amendments, and of the Finance Act, 1936; and in the matter of a reference from the Auckland Master Bakers' Association of Employers and the Auckland Operative Bakers', Pastrycooks', and Related Trades Employees' Industrial Union of Workers to determine the earnings of workers in the industry to restore the present rates of remuneration to the rates existing prior to the taking effect of the general order of the Court dated 29th May, 1931.

IN pursuance and exercise of the authority conferred by Part II of the Finance Act, 1936, and of the reference submitted to me by the Minister of Labour, I decided on the 18th August, 1936, that the rates of remuneration, including time and piece wages, and overtime, and other special payments, provided for in the Northern, Wellington, Canterbury, and Otago and Southland Bakers and Pastrycooks and their Labourers' award, dated 17th July, 1929, must be read into awards now in force so as to increase the rates of remuneration in the awards now existing to equal the corresponding rates fixed by the original award, and to ensure as far as practicable that the earnings of any worker employed under the new awards shall not be less for any week than the earnings he would have been entitled to receive if in that week he had been employed under the conditions prescribed by the original award.

Leave was given to any of the parties to submit in writing particulars of the employment, and the secretary of the employers' organization submitted the following memorandum, which was answered by the agent for the workers:—

On behalf of my executive I beg to draw your attention to the following construction which the industry places upon the Restoration

Order (Finance Act, section 15). In so doing, I wish to make it quite clear that in the award operating in 1931 time worked before 4 a.m. on ordinary days and before 3 a.m. on double days did not count in the weekly hours of forty-six, and the employer had the right to work the full weekly hours in addition to the time worked before the recognized starting-time. Assuming therefore that an operative started at midnight on five days of the week and at 11 p.m. on the day before the holiday, it was possible to work this man for seventy hours.

By section 4 of the 1929 award (operating in 1931) the conclusion of the clause states:—

In the case of journeymen and bakers' labourers double time rates shall not exceed 4s. per hour.

Therefore the week's wages for the seventy hours worked were as follows:—

		£ s. d.		
24 hours at 4s. per hour	.. ..	..	4	16 0
46 hours weekly wage	.. ..	..	5	0 0
		£9 16 0		

In subsequent awards made since 1931 the time worked before 4 a.m. was counted in the weekly hours, and penalty time of 6d. per hour has been imposed during the last three years.

I submit the following illustration as my reading of the Restoration Order as it applies to the present award:—

Operative, Week ending 22nd August.

			Starting-time.	Finishing-time.	Penalty Time.	Ordinary Time.
					Hours.	Hours.
Monday	..	..	12 a.m.	7 a.m.	4	3
Tuesday	..	..	12 a.m.	7 a.m.	4	3
Wednesday	..	..	12 a.m.	7 a.m.	4	3
Thursday	..	..	12 a.m.	7 a.m.	4	3
Friday	..	..	12 a.m.	7 a.m.	4	3
Saturday	..	..	11 p.m.	9 a.m.	4	6
					24	21

Wages Operative, Week ending 22nd August.

		£ s. d.		
24 hours at 1s. 9d. per hour	.. ..	..	2	2 0
21 hours—week's wage at 1931 rate	.. ..	..	5	0 0
		£7 2 0		

The 1s. 9d. per hour is arrived at by taking the difference between the ordinary hourly rate based upon 1931 rates of remuneration and the maximum allowed for by section 4 of this award for payment before 4 a.m.

		Per Hour.		
		s. d.		
Maximum rate, 1931, before 4 a.m.	.. ..	..	4	0
Hourly rate, 1931 award £5 per week of forty-six hours, say	.. ..	..	2	3
		1 9		

I submit, therefore, that for time worked before 4 a.m. on ordinary days and before 3 a.m. on double days that penalty time should be paid for at the rate of 1s. 9d. per hour since the 1st July, 1936, until such times as a new agreement is made.

(Sgd.) F. A. JARRETT, Secretary.

I have to acknowledge receipt of your letter of the 28th instant, in which you ask for my comments on a case submitted by Mr. Jarrett, which you enclose.

In view of your ruling given on August 18th last, "that the 1931 rates of remuneration, including time and piece rates, overtime, and special payments, had to be read into the present award," and also the last paragraph of subsection (3) of section 15 of the Finance Act, 1936, which reads as follows:—

In the determination of any question submitted to him under this subsection the Conciliation Commissioner shall endeavour to ensure, as far as practicable, that the earnings of any worker employed under the new award, agreement, or order shall not be less for any week than the earnings he would have been entitled to receive if in that week he had been employed under the conditions prescribed by the original award, agreement, or order before the taking effect of the general order hereinbefore referred to,

it is very plain to me that the only question to be decided is, "What would the journeyman baker, mentioned by Mr. Jarrett, have been entitled to receive for working the same hours immediately before the taking-effect of the general order in 1931?"

For the week ending August 22nd, the journeyman mentioned by Mr. Jarrett, worked as follows:—

—		Starting-time.	Finishing-time.	Penalty Time.	Ordinary Time.
				Hours.	Hours.
Monday	.. ..	12 a.m.	7 a.m.	4	3
Tuesday	.. ..	12 a.m.	7 a.m.	4	3
Wednesday	.. ..	12 a.m.	7 a.m.	4	3
Thursday	.. ..	12 a.m.	7 a.m.	4	3
Friday	.. ..	12 a.m.	7 a.m.	4	3
Saturday	.. ..	11 p.m.	9 a.m.	4	6
				24	21

That is a total of forty-five hours for the week.

In the Bakers Dominion award, dated 17th day of July, 1929, Book of Awards, Vol. XXIX, p. 395, which was in operation at the time of the taking-effect of the general order referred to in the Finance Act, 1936, clause 1 (e) reads:—

If any employer shall require any of his workers to start work at an earlier hour than that hereinbefore prescribed, he shall pay such worker overtime at the rate of double time for all time worked between midnight and the hour prescribed for starting work, and such overtime shall be paid notwithstanding a full day's work shall not be worked by the particular worker who is required to start work at such earlier hour.

It will be seen that the journeyman referred to by Mr. Jarrett would have been entitled to double time for all time worked before the prescribed hours of starting—viz., 4 a.m. on five days of the week, and 3 a.m. on one day—notwithstanding he did not work a full day on any day that he was required to start before the prescribed hour.

Clause 2 (d) of the same award reads as follows:—

The wage fixed by this award is a weekly wage, and no deduction shall be made therefrom except for time lost through the worker's own default, or sickness, or from accident not arising out of or in the course of his employment.

Clause 4 of the same award reads:—

In the case of journeymen and bakers' labourers double time rates shall not exceed 4s. per hour.

Assuming that the journeyman lost no time through his own default or sickness or accident as mentioned, the employer would not be entitled to make any deduction from his earnings, and therefore the worker would be entitled to—

	£	s.	d.
Weekly wages .. .. .	..	5	0 0
24 hours at 4s. per hour .. .. .	..	4	16 0
			<hr/>
	£9	16	0

It necessarily follows, therefore, that if this particular journeyman would have been entitled to receive £9 16s. in 1931, it must be conceded, after reading your ruling of August 18th, together with the 1929 award, any of the present local awards, and subsection (3) of section 15 of the Finance Act, 1936, that he is entitled to receive not less than £9 16s. for working the same hours and commencing at the same time during the week ended August 22nd, 1936.

I propose to be present while this case is being considered to make some further comments if necessary.

(Sgd.) E. J. WATSON, Secretary.

The position is stated correctly by Mr. Jarrett in the sentence in italics in the preamble to the memorandum submitted on behalf of the employers; but there is no justification for the deduction that the week's wages for the seventy hours worked were—

Weekly wage for a period of not more than forty-six hours: Such period to be worked between 4 a.m. or other specified starting-time and the hour when the journeyman completes his work for the day provided the daily hours do not exceed ten

	£	s.	d.
Weekly wage for a period of not more than forty-six hours: Such period to be worked between 4 a.m. or other specified starting-time and the hour when the journeyman completes his work for the day provided the daily hours do not exceed ten .. .. .	..	5	0 0
24 hours at 4s. per hour .. .. .	..	4	16 0
			<hr/>
	£9	16	0

There is no justification for the calculation of the wage of a journeyman baker at an hourly rate. It would be a breach of the award so to do. The employment is a weekly one, and the wage provided must be paid whether or not the hours are worked, unless for time lost through the worker's own default or sickness or accident.

The payment provided for in clause 1 (*e*) of the original award is a special overtime payment quite distinct from the general overtime provisions set out in clause 4. The special overtime payment is at the rate of double time for all time worked before the hour prescribed for starting work, and such overtime shall be paid notwithstanding a full day's work shall not be worked, &c.

Evidently when the award was made it was contemplated that the worker might not work his full daily hours. The special hours were distinct from the weekly hiring, and they could not be paid for at any rate other than double time which for the purpose of the award was set out as not exceeding 4s. per hour.

Had a journeyman baker been working during the week ending 22nd August, 1936, under the conditions prescribed by the original award—that is, the award dated 17th July, 1929—his earnings would be calculated as follows:—

	£	s.	d.
Weekly wage, clause 2 (<i>a</i>)	5	0	0
Overtime for early start (if any), clause 1 (<i>e</i>), hours at 4s. .. .. .	..	..	..
Overtime (if any), clause 4, hours at time and a quarter* .. .. .	..	..	..
Overtime (if any), clause 4, hours at time and a half .. .. .	..	..	..
Overtime (if any), clause 4, hours at double time .. .. .	..	..	..
Journeyman doughing at earlier hour, clause 1 (<i>f</i>), extra, per week	0	10	0
Total .. .. .	..	..	..

* The Factories Act provides for overtime at a minimum payment of time and a half; and for payment for work done on Sundays; and for not more than an eight-hour day without payment of overtime.

[L.S.]

S. RITCHIE, Conciliation Commissioner.