(11056.) NORTHERN, TARANAKI, WELLINGTON, CANTERBURY, AND OTAGO AND SOUTHLAND BOOT OPERATIVES.—AMENDMENT OF AWARD.

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, Taranaki, Wellington, Canterbury, and Otago and Southland Boot Operatives' award, dated the 26th day of October, 1932, and recorded in Book of Awards, Vol. XXXII, p. 400; Canterbury Boot Makers and Repairers' award, dated the 21st day of June, 1929, and recorded in Book of Awards, Vol. XXIX, p. 341; and Dunedin (Twelve-miles Radius) Boot-repairers' award, dated the 5th day of May, 1931, and recorded in Book of Awards, Vol. XXXI, p. 135. Mr. *C. A. Watts* for workers; Mr. *A. W. Nisbet* for employers.

JUDGMENT OF THE COURT, DELIVERED BY PAGE, J.

SUBSECTION (1) of section 21 of the Industrial Conciliation and Arbitration Amendment Act, 1936, provides that on application made by any industrial union bound by an award in force at the passing of the Act, the Court shall amend the award by fixing at not more than forty the maximum number of hours, exclusive of overtime, to be worked in any week by any worker bound by the award, unless, in the opinion of the Court after hearing representatives of the employers and workers concerned, it would be impracticable to carry on efficiently the industry to which the award relates if the working-hours were so limited.

This section came into force on the 8th June, 1936, but subsection (2) of the same section provides that any order made thereunder before the 1st September, 1936, shall take effect on the 1st September, 1936.

Section 3 of the Factories Amendment Act, 1936, provides that no worker shall be employed in or about a factory for more than forty hours in any one week, but that on application by any occupier of a factory the Court may extend in respect of any factory the limit of working-hours above prescribed (but not beyond forty-four hours), if, in the opinion of the Court,

it would be impracticable to carry on efficiently the work of the factory without the extension. This section does not come into force until the 1st September, 1936.

It will be seen that the issue involved in an application under the Industrial Conciliation and Arbitration Act is substantially the same as that involved in an application for extension of hours under the Factories Act, save that in the former case the extension of hours beyond forty is to be granted if it would be impracticable to carry on efficiently *the industry* without the extension, and, in the latter case, if it would be impracticable to carry on efficiently *the work of the factory.*

This fact suggested the desirability of dealing jointly at the one sitting with applications under the former Act for amendment of awards governing factory work in any given industry, and the corresponding applications under the latter Act by factory occupiers in that industry. A further reason for dealing with such matters jointly lay in the fact that if an application under the former Act were dealt with alone and the award were amended to provide without qualification for a forty-hour week, a subsequent application by any factory occupier for extension of the hours beyond forty hours per week, even if successful, would be valueless to him for the reason that the award would still bind him to a forty-hour week.

The difficulty in taking the applications jointly lay in the fact that the section in the latter Act does not come into force until the 1st September, so that applications under that Act cannot be validly entertained or dealt with until that date.

It was realized that there would be some hundreds of applications under this latter Act and that the hearing of them would take many weeks to complete.

In these circumstances, a conference was convened by the Court between certain representatives of the employers and of the workers respectively, at which it was arranged that applications under the two Acts, in so far as they related to factories, would be filed forthwith and, as to each industry, would be considered in conjunction with one another at the one hearing. It was arranged that the merits of the applications would be placed before the Court and that technical difficulties would not be raised.

This arrangement has been adhered to and the Court is thus in a position to dispose of the applications under the Industrial Conciliation and Arbitration Act and at the same time to intimate the view that it will take on the relative applications under the Factories Act. The formal decisions under the latter Act cannot, of course, be given until the 1st September when the section will come into force.

The present applications concern the footwear manufacturing industry.

The applications under the Industrial Conciliation and Arbitration Act are to amend three awards, namely:—

Northern, Taranaki, Wellington, Canterbury, and Otago and Southland Boot Operatives' award, dated the 26th day of October, 1932, and recorded in Book of Awards, Vol. XXXII, p. 400.

Canterbury Book Makers and Repairers' award, dated the 21st day of June, 1929, and recorded in Book of Awards, Vol. XXIX, p. 341.

Dunedin (Twelve-miles Radius) Boot-repairers' award, dated the 5th day of May, 1931, and recorded in Book of Awards, Vol. XXXI, p. 135.

There are seven corresponding applications under the Factories Act by the factory occupiers (approximately thirty-four in number) governed by such awards. The awards at present provide for a working week of forty-four hours.

The provision in each statute is mandatory. A forty-hour week must be observed unless it is shown that it would be impracticable to carry on efficiently the industry (or, as the case may be, the work of the factory) if the working-hours were thus limited.

The onus of proof of such impracticability lies on the employer.

The principal grounds put forward by the employers in support of their application for extension of hours beyond forty per week are—

(1) "Increased costs to the detriment of the industry as a whole," and

(2) "The shortage of skilled machine operatives."

The evidence shows that though at one time there was a prejudice in New Zealand against New Zealand made footwear—particularly footwear of the finer grades—manufacturers have, as a result of improved methods and better quality of output, largely overcome this prejudice, and the New Zealand factories have captured, against overseas competition, the bulk of the New Zealand trade. It is stated that for the year ending 31st March, 1935, six out of every seven pairs of boots and shoes sold in the shops in New Zealand were of New Zealand manufacture.

All the factories in respect of which evidence was given are at present working to their maximum capacity, and are finding difficulty in coping with the orders flowing in. Their main immediate problem is a shortage of skilled female operatives, and most of the firms could and would employ more labour

if this were available. These female operatives form a key activity in the manufacture, and without them other male labour cannot be usefully employed. Many of the manufacturers are overbooked with orders and late with some of their deliveries, with the result that some firms have very considerably increased their volume of imports.

Some of the witnesses express the fear that, if a shorter working-week is ordered, its effect, coupled with the increase in wages enacted by the Factories Amendment Act, and the increase in award wages about to be made by the restoration of the award rates prevailing in 1931, will be so to increase the manufacturing cost of footwear as to render manufacturers unable to continue to hold their own against foreign competition. They contend that until the shortage of labour is overcome there will be a reduction in output as a result of the shorter working-week and that this will entail increased imports from overseas.

In an industry of this type, where no lengthy technical process necessitating the attendance of individual workers for longer periods than forty hours in a week is involved, the question of a forty-hour week resolves itself substantially into a problem of finance.

Whether "it would be impracticable" for an industry of this type "to carry on efficiently" on a forty-hour week depends, we think, on whether the industry would be able successfully and profitably to operate under the altered conditions.

Though no balance-sheets or other information showing the financial operations or the trading returns of the various manufacturers were made available to the Court, we think that it is clear from the evidence that this industry is in a very buoyant and favourable position. Business is, we are told, better than it has been at any time during the last seven years.

Upon a careful consideration of the whole of the evidence tendered and of the submissions made on behalf of the respective parties, we are of opinion that it has not been established that it would be impracticable to carry on efficiently this industry or the work of any of the factories in question on a forty-hour week.

An order must, therefore, be made under section 21 of the Industrial Conciliation and Arbitration Amendment Act, 1936, amending the above awards by fixing at forty the hours (exclusive of overtime) to be worked in any week by any worker bound by any of such awards.

Rates of pay prevailing on 1st September, 1936, will be adjusted in accordance with subsection (3) of section 21, 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 working hours.

The order will take effect on 1st September, 1936.

Section 22 of the Act states that in any order made under section 21 the Court shall endeavour to fix the daily working-hours so that no part of the working period falls on a Saturday.

This question will be dealt with in a subsequent memorandum.

Dated this 1st day of July, 1936.

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