NORTHERN (AUCKLAND) INDUSTRIAL DISTRICT.

(11084.) AUCKLAND (TWENTY-MILES RADIUS) MILK-ROUNDSMEN.—APPLICATION FOR 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 an application to amend the Auckland (Twenty-Miles Radius) Milk Roundsmen's award, dated the 16th day of April, 1936, and recorded in Book of Awards, Vol. XXXVI, p. 193. Mr. *J. P. John* for workers in Pasteurizing and Distributing Depots; Mr. *J. Purtell* for Roundsmen; Mr. *W. E. Anderson* for Employers.

INTERIM JUDGMENT OF THE COURT, DELIVERED BY PAGE, J.

THIS is an application 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 award above mentioned relating to milk roundsmen.

In conjunction therewith, upon the terms detailed in the judgment of the Court given in the applications relating to the footwear-manufacturing industry, the Court is considering, under section 3 of the Factories Amendment Act, 1936, an application made on behalf of four occupiers of milk pasteurizing and distributing depots for an extension, to 44, of the weekly hours of work fixed by the latter statute.

Each of the two statutes 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 (or, as the case may be, the work of the factory) if the hours of work were thus limited.

The onus of proof of impracticability lies on the employer.

These cases concern milk roundsmen and those depots that receive, pasteurize, and distribute milk in the City of Auckland.

The cases relating to the men that work in the depots and those relating to the roundsmen that deliver the milk were heard separately, for the reason that the respective men are covered by different awards, but, as the whole of the operations are carried out by each employer who has applied for extension of hours, we propose to deal with both classes in this judgment.

A preliminary point raised in the course of the hearing calls for consideration.

Subsection (3) of section 3 of the Factories Act, 1936, exempts from the limits of working-hours fixed by subsection (1) (including that limiting the working-hours to 40 per week) any

male worker employed in any works or factory comprised in any of the classes specified in the Second Schedule to the principal Act.

Amongst those classes are "dairy factories, including creameries."

The question is whether the factories of the employers concerned in these applications come within that class.

The main and dominant activity of these employers is, we think, that of distributors of milk and cream.

They purchase their supplies in bulk from dairy-farmers.

Some of them also own and operate dairy-farms of their own and augment their supplies of milk from such farms.

As the milk comes in they test, pasteurize, and cool it, and then put it in cans, into cool store ready for delivery. It is then taken away, some of it in bottles and some in cans, by the roundsmen and distributed to the public.

Some of the milk is separated on the premises and the resultant cream is supplied to the public.

For a period of about nine months of the year there is usually a surplus of milk above requirements, and this surplus is separated on the premises and the resultant cream is sent to a butter-factory to be made into butter.

The words "dairy factory" are not defined by the statute.

Webster's dictionary defines a "dairy" as "the place, room, or house where milk is kept and converted into butter and cheese."

We do not think that the various premises in question are dairy factories.

The word "creamery" is also not defined by the statute, but, having regard to the context in which the word appears, we think that the type of factory primarily contemplated by the statute was the factory where milk was taken in bulk and separated into cream and skim-milk, the factory being usually operated in conjunction with a butter-factory, though frequently situate in an outlying district some miles away from the butter-factory.

We think that, in so far as the separator-room in the premises of the applicants is concerned, this room is a "creamery" within the meaning of the section, and, accordingly, that if any male workers are employed exclusively therein they are exempt from the limits of working-hours fixed by subsection (1) of section 3 of the statute.

The rest of the factory is, in our opinion, not a creamery.

In Auckland the prices to be paid for milk to dairy-farmers by the distributing firms and the prices to be charged to the public to whom the milk is distributed are controlled by the Auckland Milk Council, and the present prices were fixed a few months ago.

The workers in this industry at present work a 48-hour week spread over 7 days.

We are of opinion that, in so far as the mechanical operations incidental to this industry are concerned, it is practicable to carry them on efficiently on a 40-hour week, both as to workers in the depots and as to roundsmen; but it is manifest that such reduction of the working-hours must entail the employment of additional labour, with a consequent increase in working-costs.

In our opinion the present margin fixed by the Auckland Milk Council between the price payable to the farmers for milk in bulk and the price chargeable to the public on distribution is insufficient to enable the employers to carry on efficiently on a 40-hour week, and such margin will require to be increased before a 40-hour week could be ordered.

We propose to adjourn further consideration of this case until the 24th August, 1936, so that the Auckland Milk Council and others interested may, if they deem it desirable, go into the question of prices. If and when this is done, these applications will be given further consideration.

Dated this 21st day of July, 1936.

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