(11085.) NORTHERN INDUSTRIAL DISTRICT (EXCEPT GISBORNE JUDICIAL DISTRICT) GROCERS' ASSISTANTS AND DRIVERS; WELLINGTON INDUSTRIAL DISTRICT RETAIL GROCERY WORKERS; AND CANTERBURY RETAIL GROCERY WORKERS.—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) Grocers' Assistants and Drivers' award, dated the 3rd day of March, 1933, and recorded in Book of Awards, Vol. XXXIII, p. 134; the Wellington Industrial District Retail Grocers Workers' award, dated the 26th day of September, 1935, and recorded in Book of Awards, Vol. XXXV, p. 955; the Canterbury Retail Grocery Workers' award, dated the 27th day of September, 1935, and recorded in Book of Awards, Vol. XXXV, p. 993. Mr. *A. W. Croskery* for the workers; Mr. *W. E. Anderson* 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 three awards above enumerated relating to the retail grocery trade.

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.

These are applications by grocers' assistants throughout New Zealand for a 40-hour week and for the elimination of work on Saturdays.

The effect of the applications, if granted, would be to close all grocers' shops throughout New Zealand from Friday evening until Monday morning.

The hours at present worked in this industry are 48 per week.

Hitherto the chief applications dealt with by this Court have been those affecting workers in *factories*. Speaking broadly, the daily needs of the general public are not immediately interfered with by a reduction of working-hours in factories.

Fundamentally different considerations apply, however, to applications which involve the closing of shops that supply, daily, the food and sustenance or other needs of the general public; and, in considering whether, in the words of the statute, " it is impracticable to carry on efficiently the industry " in question, regard must be had to the real function and purpose of such industry and to the service that it is called upon to give.

The established customs and the daily needs of the general public are matters of great importance in the consideration of an application involving a general closing of shops.

For many years the Legislature has recognized the principle that hours of work in factories should be shorter than those in shops. Reasons for this difference in hours may possibly be found in the fact that, in general, factory work is the more constant and arduous, and that factory hands require some opportunity of doing their shopping.

This principle appears to have been recognized throughout the legislation passed during the present year.

Thus, the Factories Amendment Act, 1936, limits, as from 1st September, the hours of work in factories to 40 per week, with a right of appeal to the Court for extension where it is impracticable to carry on efficiently the work of the factory on such reduced hours, and the Industrial Conciliation and Arbitration Amendment Act, 1936, enforces a corresponding reduction of the hours fixed by awards.

The Shops and Offices Amendment Act, 1936, on the other hand, limits the hours of work in shops 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.

Many shop-assistants are, however, covered by awards, and it is under the provisions contained in the Industrial Conciliation and Arbitration Amendment Act that the present applications are brought. Section 22 of that Act says that, when making an order for reduction of hours to 40 per week, the Court shall " endeavour to fix the daily working-hours so that no part of the working-period falls on a Saturday."

In view, however, of the history and the present condition of the legislation, it would require a strong case to justify this Court in making an order the effect of which would mean the closing of retail shops from Friday until Monday in each week.

Moreover, it is shown that Fridays and Saturdays are busy shopping-days.

In the industry in question, it is shown that from 40 per cent. to 50 per cent. of the week's turnover is done on Friday and Saturday.

Further, in some towns and localities the statutory half-holiday falls on a day in the midweek, shop-keepers having a statutory right to close on such day, and Saturday, in such places, becomes the market day of the week.

To deprive, by the operation of an award, the public of its opportunity to shop on that day and the shop-keeper of his right to carry on his industry on that day, would, in our opinion, not be justified.

On this broad and general ground this Court refuses to make an order prohibiting work on Saturdays.

Many sound additional grounds (if other grounds were needed) for opposing Saturday closing, applicable more particularly to grocers' shops, were put forward by the employers' advocate in his argument of the case.

Amongst them may be mentioned the general need of the public to replenish food-supplies on Saturdays to last over the week-end, the needs of hotels and boarding establishments, the needs of holiday-makers whose outings may be dependent on the weather conditions prevailing on Saturdays, the needs of small-wage earners to make their purchases after receiving their pay on Fridays, and the needs of mothers to send their school-children on shopping messages, or to keep the older ones at home to mind the younger ones while they themselves get the

opportunity of doing their shopping, and the inability, in most households, of keeping certain kinds of food fresh and sweet over so long a period.

Saturday shopping is valuable for these and many other purposes.

It has been suggested that, though Saturday opening is retained, a 40-hour week could still be ordered by either reducing the hours over the remaining days of the week (a reduction of about an hour and a half per day) or by allowing some employees to arrive late in the mornings and others to leave early in the evenings.

Having regard to the service that retail shops are called upon to give, neither of these suggestions is, in our view, consistent with the efficient working of the industry.

An order will be made reducing from 48 to 44 the maximum number of hours (exclusive of overtime) to be worked by any worker bound by any of the above-enumerated awards.

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.

Work on Saturdays will be permitted.

The order will come into force on 1st September, 1936.

Dated the 31st day of July, 1936.

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