

NELSON INDUSTRIAL DISTRICT.

(11092.) NELSON JAM FACTORIES EMPLOYEES.—AMENDMENT OF INDUSTRIAL AGREEMENT.

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 Nelson Jam Factory Employees' industrial agreement, dated the 12th day of October, 1932, and recorded in Book of Awards, Vol. XXXII, p. 323. Mr. *J. Read* for the workers; Mr. *A. W. Nisbet* for the employers.

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 industrial agreement above mentioned relating to fruit and vegetable preserving and canning and jam-making.

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, three applications made on behalf of three factory occupiers 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.

The industries concerned in these applications are fruit and vegetable preserving and canning and jam-making.

The employers have offered to work, during the six winter months of the year—namely, from May to October, inclusive—a 40-hour week and to exclude Saturday work; but they ask that during the six summer months of the year—namely, from November to April, inclusive—the hours of work be extended to 44 per week and that Saturday work be permitted.

The hours at present worked throughout the year are 48 per week, including work on Saturdays, for males, and 45 per week, including work on Saturdays, for females.

These industries are in their nature seasonal.

The main crops of fruit and vegetables handled by the manufacturers ripen and are picked during the summer months. Thus, the asparagus crop is picked in October and November;

green peas, strawberries, and gooseberries from November to January; apricots, black-currants, red-currants, greengages, plums, and loganberries from December to January; and so on in a sequence of crops down to April.

Ripe fruit and vegetables constitute a very perishable product, and it is obvious that, if success is to be achieved, immediate processing and preserving at the factory is of the utmost importance, both to save the product from deterioration, fermentation and decay, and to maintain the highest quality of preserves by the use of the fruit and vegetables in their best and freshest condition. The quantity of fruit and vegetables received daily at the factories varies according to climatic conditions, and the factories must be in a position to deal at once with all deliveries. A delay of even a few hours would, in the case of the more delicate of the fruits and vegetables, be fatal to success.

For these reasons the manufacturers, though for the summer months they largely increase their factory staffs and though they work a 48- and 45-hour week for males and females respectively, find themselves, under present conditions, compelled to work (and to pay for) many thousands of hours of overtime. It would, we think, prove quite impracticable, throughout the summer months, to work these factories efficiently on a 40-hour week.

To close them down on Saturdays in the summer months would involve the industry and, incidentally, the growers of the fruit and vegetables, in considerable losses.

We think that the employers have made out a case for relief from the provisions of the statute.

A 44-hour week is the maximum allowed by law after 1st September next, and by a majority we are of opinion these manufacturers have established their right to a week of 44 hours during the summer months.

The industrial agreement will accordingly be amended in accordance with the foregoing judgment by giving, during the summer months (1st November to 30th April, inclusive) a working-week of 44 hours (exclusive of overtime), with the right to work on Saturdays; and giving (by consent), during the winter months (1st May to 31st October, inclusive), a working-week of 40 hours (exclusive of overtime) and eliminating work on a Saturday.

A corresponding order will on 1st September, 1936, be issued under the Factories Act in respect of each factory concerned in these applications.

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 rate of weekly wages of any worker shall not be reduced by reason of the reduction made in the number of his working-hours.

Certain exemptions from the hours fixed by the Factories Acts are given in respect to "fruit-canning factories and jam-factories" by section 22 of the Act of 1921-22, and in respect to "jam-factories (during the small fruit season)" by subsection (3) of section 3 of the Act of 1936.

This present order does not disturb those exemptions.

The order will come into force on 1st September, 1936, and will continue until 1st September, 1937.

Mr. Monteith is of opinion that the 44-hour week in respect of females should begin on 1st December and not on 1st November, as there is no evidence that overtime has been worked by females in the month of November.

Dated this 16th day of July, 1936.

[L.S.]

E. PAGE, Judge.