

NEW ZEALAND (EXCEPT CANTERBURY AND OTAGO EAST AND NORTH OF TAIERI RIVER) **TIMBER-WORKERS.**—AMENDMENT OF AWARD.

In the Court of Arbitration of New Zealand, Wellington Industrial District.—In the matter of the Industrial Conciliation and Arbitration Act, 1925, and its amendments; and in the matter of the New Zealand (except Canterbury and Otago East and North of Taieri River) Timber-workers' award, dated the 13th day of April, 1938, and recorded in Book of Awards, Vol. XXXVIII, p. 1217.

Friday, the 28th day of October, 1938.

UPON reading the application of the union of workers party to the New Zealand (except Canterbury and Otago East and North of Taieri River) Timber-workers' award, dated the 13th day of April, 1938,

and recorded in Book of Awards, Vol. XXXVIII, p. 1217, for amendment of the said award, and upon hearing the duly appointed representatives of the said union and the employers concerned, this Court, in pursuance and exercise of the powers reserved to it by clause 33 (b) of the said award, doth hereby order as follows:—

1. That clause 33 of the said award shall be deleted and the following clause substituted therefor:—

“ Exemptions.

“ 33. This award shall be limited in its operation and shall not apply to the following:—

“ (i) Freezing companies, except those companies which manufacture for sale goods that are usually manufactured by parties to this award: Provided, however, that freezing companies bound by the Northern Industrial District Coopers' award shall not be subject to the provisions of this award in respect of their coopers;

“ (ii) Motor and horse drivers, except those employed in or about any timber-yard, box-factory, or other wood-working factory, sawmill, wood-drying kiln, wood-pulping factory, bush workings or bush tram-lines, including construction workers;

“ (iii) Engine-drivers and their assistants within a radius of twenty-five miles from the General Post Office, Wellington; and drivers of bush locomotives, log-haulers, and traction-engines in the Northern Industrial District other than those employed in or about any timber-yard, box-factory, or other wood-working factory, sawmill, wood-drying kiln, wood-pulping factory, bush workings or bush tram-lines, including construction workers.”

2. That this order shall operate and take effect as from the day of the date hereof.

[L.S.]

W. J. HUNTER, Judge.

MEMORANDUM.

The question arises whether the rules of the New Zealand Timber-workers' Union are sufficiently wide to cover drivers employed by sawmillers and timber-merchants in carting timber from their timber-yards to customers and generally about the towns in which they are employed, or in carting logs from bush workings to sawmills.

Rule 4 (a), so far as is relevant to this point, reads as follows :—

“ Any person employed or intending to be employed in the Northern, Wellington, Marlborough, Nelson, or Westland Industrial Districts as a timber-worker in or about or in connection with any timber-yard, box-factory, or other wood-working factory, sawmill, wood-drying kiln, wood-pulping factory, bush workings or bush tram-lines, including construction workers, and any person employed in or about any such establishment loading or unloading timber, or as an engine-driver, engineer, fitter, blacksmith, carpenter, or carter of any description, or as a motor- or steam-boat employee engaged rafting timber on lakes, shall become a member of the union, without ballot or other election, upon making written or verbal application to the secretary-treasurer of the union or of any of its branches or any properly authorized agent, and paying an entrance fee of five shillings . . . ”

The rule covers three classes of worker :—

- (a) Any person employed as a timber-worker in or about or in connection with any timber-yard, box-factory, or other wood-working factory, sawmill, wood-drying kiln, wood-pulping factory, bush workings or bush tram-lines, including construction workers.
- (b) Any person employed in or about any such establishment loading or unloading timber, or as an engine-driver, engineer, fitter, blacksmith, carpenter, or carter of any description.
- (c) Any person employed as a motor- or steam-boat employee engaged rafting timber on lakes.

In the first class the words “ in or about or in connection with ” are used. They are obviously much wider than the words “ in or about ” used regarding the second class.

The words “ in or about ” have been judicially interpreted. In *Archer v. Le Cren* ([1931] N.Z.L.R. 208), a case dealing with the interpretation of the Shops and Offices Act, 1908, Sir Robert Stout, Chief Justice, said, “ What ‘ in a shop ’ means is clear—the assistant must be in the ‘ shop ’ or building ; and what ‘ about ’ means is also clear—it must mean locally near to the shop. It is used . . . ‘ in a geographical sense.’ ” This has been held in many cases under the English Employers’ Liability Acts : see, for example, *Powell v. Brown* ((1899) 1 Q.B. 157) ; *Fenn v. Miller* ((1900) 1 Q.B. 788).

The correct interpretation of the words “ in or about ” is well illustrated by the two last-mentioned cases. In *Powell v. Brown*, which was a case under the Workmen’s Compensation Act, 1897, the facts were that a cart, belonging to the owners of a factory, was standing in a street, close to the entrance to the factory-yard, in a

position in which it was usually loaded. A workman in the employment of the factory-owners was engaged in loading the cart, and was injured while doing so. On a claim for compensation under the Workmen's Compensation Act, 1897, the County Court Judge before whom the claim came held that the employment was "about" a factory within the meaning of section 7, subsection (1), and awarded compensation. (The words of the Act in that case were "on, in, or about a factory.") It was held by the Court of Appeal that the section includes the case of employment in proximity to a factory.

The same section was under consideration in the case of *Fenn v. Miller (supra)*, and the employment in question was that of a carter. The facts were that a builder was erecting houses on a building estate which was in course of development. On the estate was a barn containing a steam-engine and mortar-mill, which was used for the purposes of the building operations, and which constituted a factory within the meaning of section 7, subsection (1), of the Workmen's Compensation Act, 1897. The respondent, a labourer in the builder's employment, whose duty it was to fetch water in a cart from a brook at some distance along the main road for the mortar-mill and buildings, was injured while returning with the cart at a spot about 110 yards to 160 yards distant from the engine and mortar-mill owing to the horse running away. It was held that there was no evidence upon which the County Court Judge could properly find that the employment of the respondent was employment "about" a factory within the meaning of the Act.

From a consideration of these decisions we think it is clear that a carter—a term which we have no doubt is sufficiently wide to include the driver of a lorry or other motor-vehicle engaged in carting goods—who is engaged in carting goods from his employer's timber-yard to customers and generally about the town in which he is employed is not covered by the words "in or about" used in connection with persons included in class (b) above, and is therefore not covered by the rules of the New Zealand Timber-workers' Union. Carters, however, employed *in or about* any timber-yard, box-factory, or other wood-working factory, sawmill, wood-drying kiln, wood-pulping factory, bush workings or bush tram-lines, including construction workers, using the term "in or about" in the sense indicated above, are, in our opinion, covered by the provisions of the rules.

Following the decision in respect of motor and horse drivers, partial exemption has been granted to certain classes of engine-drivers.

W. J. HUNTER, Judge.