THE GUARDIAN TRUST AND EXECUTORS CO. OF NEW ZEALAND **CLERICAL WORKERS.**—VARIATION OF INDUSTRIAL AGREEMENT.

THIS agreement, made this 22nd day of November, 1938, between the Guardian Trust and Executors Co. of New Zealand, Ltd. (hereinafter termed " the employer "), of the one part, and the New Zealand General Insurance Industrial Union of Workers

(hereinafter termed "the union"), of the other part: Whereas by an agreement dated the 6th day of May, 1938, and made between the above parties and registered as an industrial agreement under the provisions of the Industrial Conciliation and Arbitration Act, 1925, the terms and conditions of the members of the union employed by the employer were defined: And whereas by the said agreement it was provided that the terms and conditions of employment should remain in full force and effect for a period of one (1) year from the said 6th day of May, 1938: And whereas it has now been agreed between the parties that the said agreement be amended by reducing the time during which the same shall remain in force from the term of one year to a period from the said 6th day of May, 1938, down to the 22nd day of November, 1938. Now this agreement witnesseth as follows:—

1. The parties hereto hereby agree that the said agreement of the 6th day of May, 1938, shall be amended by deleting clause 20 thereof and substituting therefor the following:—

"*Term of Agreement.*

"This agreement, in so far as it relates to wages, shall be deemed to come into force on the 1st day of January, 1938, and so far as all the other conditions of this agreement are concerned it shall come into force on the 6th day of May, 1938; and this agreement shall continue in force until the 22nd day of November, 1938."

In witness whereof the parties hereto have set their hands or seals this 22nd day of November, 1938.

The Guardian Trust and Executors Co. of New Zealand—

[L.S.] R. WARD, General Manager.

Witness—Ralph H. Jones.

The New Zealand General Insurance Industrial Union of Workers—

[L.S.] E. E. HAMMOND, President.
W. D. LANE, Member of Council.

Witness—P. J. Doogan.

AUCKLAND ELECTRICAL WORKERS' UNION *v.* THAMES VALLEY ELECTRIC-POWER BOARD.

IN the Magistrate's Court holden at Te Aroha.—Between the Auckland Electrical Workers' Industrial Union of Workers, plaintiff, and the Thames Valley Electric-power Board, defendant. Hearing and judgment, 28th January, 1938.

Wages—Rate of—Forty-hour Week—Order under Section 21, Industrial Conciliation and Arbitration Amendment Act, 1936—Reduction of Maximum from Forty-six Hours to Forty Hours—"Ordinary Rate of Weekly Wages."

The award allowed a forty-six hour week, but the defendant Board had for years past been observing and working its employees generally on a forty-hour-a-week basis. On the coming into force of an order reducing the maximum weekly hours fixed by the award from forty-six to forty pursuant to section 21 of the Industrial Conciliation and Arbitration Amendment Act, 1936, the union claimed that the hourly rate of pay should be adjusted to 46/40ths of that stated in the award. *Held,* That the whole scheme of section 21 (3) was to safeguard to workers their "ordinary rate of weekly wages" where the reduction in their weekly hours of work, by the introduction of a forty-hour week, would otherwise have resulted in a reduction of their "ordinary rate of weekly wages," and that the Board, having worked for some years past on a forty-hour-a-week basis and, having paid its employees the current award rate of pay for forty hours, was not bound under section 21 (3) to increase the rates of pay to 46/40ths of the rates fixed by the award.

JUDGMENT OF F. H. LEVIEN, ESQ., S.M.

THIS was an action to recover separate penalties of £10 each in respect of the defendant Board's alleged failure to pay to a linesman and a linesman's assistant in its employ for the period 9th November, 1936, to 9th November, 1937, the rates of pay fixed by the Northern Industrial District Electrical Workers (Electric-power Boards, &c.) award of 17th December, 1930, and recorded in Book of Awards, Vol. XXX, p. 979, which was amended by order of the Arbitration Court dated 7th September, 1936, and recorded in Book of Awards, Vol. XXXVI, p. 562, by reducing to forty hours the maximum of forty-six hours which the award stated "shall constitute a week's work" for linesmen and linesmen's assistants. The claim further alleged that the said rates of pay—2s. 2½d. per hour for linesmen and 2s. for linesmen's assistants—were increased in consequence of the provisions of section 21 (3) of the Industrial Conciliation and Arbitration Amendment Act, 1936.

No evidence was called by either party.

The following facts were admitted.

(1) That the two workers in question had been employed by the defendant Board for some years prior to and subsequent to the 9th November, 1936, and were still so employed.

(2) That the defendant Board for years past had been observing and working its employees generally on a forty-hour week and paying them weekly for forty hours at the per-hour rate fixed by the award.

In effect the question submitted to the Court was whether for the period mentioned in the claim the two workmen should, in pursuance of section 21 (3) of the Amendment Act of 1936, be entitled to receive for the forty hours worked by them in terms of the said amending order of the Arbitration Court, the wages which would have been payable to them had they, prior to that order, been working for the maximum forty-six hours per week permitted by the award.

Section 21 (3) reads as follows:—

Where by an order of the Court made under this section the maximum number of hours to be worked in any week, as fixed by any award or industrial agreement, is reduced, any rates of pay fixed in the award or agreement shall, if necessary, be increased, either directly by the Court or indirectly by the operation of the order, so that the ordinary rate of weekly wages of any worker bound by the award or agreement shall not be reduced by reason of the reduction made in the number of his working-hours.

Now, with reference to this section there can be no doubt that the amending order " reduced " the maximum number of hours to be worked in any week, as fixed by this award, from forty-six hours to forty hours. Under such circumstances section 21 (3) goes on to provide that " any rates of pay, &c."

It appears to me that the " ordinary rate of weekly wages " payable to the workers in question was based upon, and paid for some years at the hourly rates of pay set out in the award. There is no provision in the original award to compel the defendant Board to employ its workers for a maximum period of forty-six hours per week. It was not contended that the defendant Board's action in this respect was illegal. It was in fact not only assisting in one of the implied purposes of the Amending Act of 1936 for the reduction of unemployment, but also anticipating by some years the forty-hour week and the reversion to the 1931 wage-level which was effected by the Finance Act, 1936 (Part II).

If it had been intended that the plain words " ordinary rate of weekly wages " should mean the rate of weekly wages to which a worker would have been entitled had he worked the maximum number of hours fixed by the award, then one would have expected those or similar words to have been used in the statute.

Further, if the Arbitration Court had so interpreted section 21 (3) and the words referred to, it had power and

apparently still has power, upon due application, "directly" to increase "the rates of pay fixed in the award" to give effect to such interpretation.

Both Mr. Tuck for the plaintiff union, and Mr. Alderton for the defendant Board, referred to *In re Wellington Timber-yards and Sawmills Employees' Award* ([1937] G.L.R. 502; [1937] N.Z.L.R. 791) as authority in support of their contentions as to the interpretation of section 21 (3). In my opinion, the judgment referred to deals with the interpretation of section 21 (3) only in its application to a special clause—clause 1 of the Wellington Timber-yards and Sawmill Employees' award, 1936, and is of no assistance in the present case.

The whole scheme of section 21 (3) is to safeguard to workers their "ordinary rate of weekly wages" where the reduction in their weekly hours of work, by the introduction of a forty-hour week, results in a reduction of their "ordinary rate of weekly wages." As I have already stated, there is no magic in the words "ordinary rate of weekly wages" and had either of the workmen in question been asked, What is your ordinary rate of weekly wages? there can be no doubt as to the answer that would have been given.

In my judgment the defendant Board having worked for some years past on a forty-hour-a-week basis and having paid its employees the current award rate of pay for forty hours, it is not bound under section 21 (3) to increase the rates of pay fixed by the Northern Industrial District Electrical Workers' (Electric-power Boards, &c.) award of the 17th December, 1930, and recorded in Book of Awards, Vol. XXX, p. 979.

Judgment will be for the defendant Board.

F. H. LEVIEN, Stipendiary Magistrate.