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NEW ZEALAND **RETAIL CHEMISTS' ASSISTANTS.**—AWARD

*[Filed in the Office of the Clerk of Awards, Wellington]*

In the Court of Arbitration of New Zealand, Northern, Taranaki, Wellington, Marlborough, Nelson, Westland, Canterbury, and Otago and Southland Industrial Districts.—In the matter of the Industrial Conciliation and Arbitration Act, 1925; and in the matter of an industrial dispute between the New Zealand Federated Shop-assistants' Industrial Association of Workers (hereinafter called "the union") and the undermentioned persons, firms, and companies (hereinafter called "the employers") :—

*[List of parties may be seen at any office of the Department of Labour]*

THE Court of Arbitration of New Zealand (hereinafter called "the Court"), having taken into consideration the matter of the above-mentioned dispute, and having heard the union by its representatives duly appointed, and having also heard

such of the employers as were represented either in person or by their representatives duly appointed, and having also heard the witnesses called and examined and cross-examined by and on behalf of the said parties respectively, doth hereby order and award:—

That, as between the union and the members thereof and the employers and each and every of them, the terms, conditions, and provisions set out in the schedule hereto and of this award shall be binding upon the union and upon every member thereof and upon the employers and upon each and every of them, and that the said terms, conditions, and provisions shall be deemed to be and they are hereby incorporated in and declared to form part of this award; and, further, that the union and every member thereof and the employers and each and every of them shall respectively do, observe, and perform every matter and thing by this award and by the said terms, conditions, and provisions respectively required to be done, observed, and performed, and shall not do anything in contravention of this award or of the said terms, conditions, and provisions, but shall in all respects abide by and perform the same. And the Court doth hereby further award, order, and declare that any breach of the said terms, conditions, and provisions set out in the schedule hereto shall constitute a breach of this award, and that a penalty as by law provided shall be payable by any party or person in respect thereof. And the Court doth further order that this award shall take effect on the 25th day of October, 1943, and shall continue in force until the 25th day of October, 1945, and thereafter as provided by subsection (1) (d) of section 89 of the Industrial Conciliation and Arbitration Act, 1925.

In witness whereof the seal of the Court of Arbitration hath hereto been affixed, and the Judge of the Court hath hereunto set his hand, this 14th day of October, 1943.

[L.S.]

A. TYNDALL, Judge.

#### SCHEDULE

##### *Application of Award*

1. (a) This award shall apply to the trade or business of retail chemists.

(b) This award shall apply to the original parties named herein, and shall extend to and bind as subsequent party hereto every trade-union, industrial union, industrial association, or employer who, not being an original party hereto,

is, when this award comes into force or at any time whilst this award is in force, connected with or engaged in the industry to which this award applies within the industrial districts to which this award relates.

(c) Nothing in this award shall apply to apprentices.

(d) Nothing in this award shall apply to clerks, cashiers, or any other persons solely engaged in the office-work of the employer and not engaged in the work of the shop in any capacity.

(e) Nothing in this award shall apply to a boy or girl employed exclusively as a messenger.

#### *Definitions*

2. (a) A "manager" is a registered chemist who is legally enrolled as the manager of a pharmacy.

(b) A "relieving manager" is a registered chemist who is employed to take charge of a pharmacy during the absence of the enrolled manager or occupier.

(c) A "qualified assistant" is a person who, being twenty-one years of age or over, has obtained from the Pharmacy Board a certificate of competency as a pharmaceutical chemist pursuant to the provisions of subsection (1) (a) of section 11 of the Pharmacy Act, 1939, or is the holder of a recognized certificate granted out of New Zealand, as defined in subsection (2) of the same section.

(d) An "unqualified assistant" is a person who has served four years as an apprentice to a registered chemist keeping open shop or dispensary for the compounding and dispensing of prescriptions.

(e) A "casual worker" is a worker employed for a period of less than two consecutive weeks.

(f) No person other than those referred to in this clause shall be engaged in the compounding of medicines.

#### *Hours of Work*

3. (a) The weekly hours shall be forty-four, and shall be worked in accordance with the provisions of the Shops and Offices Act, 1921-22, and its amendments: Provided the daily hours shall not exceed eight per day on four days of the week, ten hours on one day of the week, and four hours on the day on which the statutory half-holiday is observed.

(b) One hour shall be allowed for dinner on all days except the statutory half-holiday.

## Wages

4. (a) The following shall be the minimum rates of wages:—

	Per Week.
	£ s. d.
(i) Managers .. .. .	7 0 0

A relieving manager shall be paid not less than 10s. per week in excess of the rate prescribed for a manager.

(ii) Assistants—

Qualified assistants .. .. .	6 7 6
Unqualified assistants—	
Under 21 years of age .. .. .	4 0 0
21 years of age and under 22 years of age .. .. .	5 0 0
22 years of age and under 23 years of age .. .. .	5 7 6
23 years of age and over .. .. .	5 15 0

(b) Casual workers shall be paid not less than 3s. 8d. per hour in the case of qualified assistants, and 3s. 4d. per hour in the case of unqualified assistants.

(c) (i) Relieving assistants or relieving managers' travelling-expenses shall be paid in addition to wages if employed outside a radius of five miles from the chief post-office in any town.

(ii) Any such assistant or manager who is required to live away from his permanent home shall receive a board allowance of £2 per week, or the employer may provide board and lodging in lieu thereof.

(d) Any worker employed in a chemist's shop other than those referred to in subclauses (a), (b), (c), (d), and (e) of clause 2 or in subclause (e) of this clause shall be paid not less than the following rates of wages:—

	Males.			Females.		
	Per Week.			Per Week.		
	£	s.	d.	£	s.	d.
(i) Under 15 years of age—						
First six months .. .. .	0	17	0	0	17	0
Second six months .. .. .	1	1	0	1	1	0
Third six months .. .. .	1	5	0	1	5	0
Fourth six months .. .. .	1	10	0	1	9	0
Fifth six months .. .. .	1	15	0	1	13	0
Sixth six months .. .. .	2	0	0	1	17	0
17 years of age and under						
18 years .. .. .	2	5	0	2	1	0
18 years of age and under						
19 years .. .. .	2	12	6	2	4	0

	Males.			Females.		
	Per Week.			Per Week.		
	£	s.	d.	£	s.	d.
19 years of age and under	3	0	0	2	7	0
20 years of age and under	3	10	0	2	11	0
21 years of age and under	4	2	6	2	15	0
22 years of age and under	4	15	0	3	0	0
23 years of age and over	5	10	0	3	7	6

(ii) Where the worker enters or has entered on the duties of a shop-assistant without previous experience—

(a) Between the ages of 15 and 16 years—

	Males.			Females.		
	Per Week.			Per Week.		
	£	s.	d.	£	s.	d.
During the first six months' experience	0	17	0	0	17	0
During the second six months' experience	1	1	0	1	1	0
During the third six months' experience	1	5	0	1	5	0
During the fourth six months' experience	1	10	0	1	9	0
During the fifth six months' experience	1	16	0	1	13	0
During the sixth six months' experience	2	2	6	1	17	0
And thereafter in accordance with paragraph (i) of this subclause.						

(b) Between the ages of 16 and 17 years—

During the first six months' experience	1	1	0	0	19	0
During the second six months' experience	1	5	0	1	3	0
During the third six months' experience	1	10	0	1	7	0
During the fourth six months' experience	1	15	0	1	11	0
During the fifth six months' experience	2	2	6	1	15	0
During the sixth six months' experience	2	10	0	2	0	0
And thereafter in accordance with paragraph (i) of this subclause.						

	Males.			Females.		
	Per Week.			Per Week.		
	£	s.	d.	£	s.	d.
(c) Between the ages of 17 and 18 years—						
During the first six months' experience .. ..	1	5	0	1	1	0
During the second six months' experience .. ..	1	10	0	1	5	0
During the third six months' experience .. ..	1	17	6	1	9	0
During the fourth six months' experience .. ..	2	5	0	1	13	0
During the fifth six months' experience .. ..	2	12	6	1	18	0
During the sixth six months' experience .. ..	3	2	6	2	3	0
And thereafter in accordance with paragraph (i) of this subclause.						
(d) Between the ages of 18 and 19 years—						
During the first six months' experience .. ..	1	17	6	1	5	0
During the second six months' experience .. ..	2	5	0	1	10	0
During the third six months' experience .. ..	2	12	6	1	15	0
During the fourth six months' experience .. ..	3	0	0	2	0	0
And thereafter in accordance with paragraph (i) of this subclause.						
(e) Between the ages of 19 and 21 years—						
During the first six months' experience .. ..	2	5	0	1	10	0
During the second six months' experience .. ..	2	12	6	1	15	0
During the third six months' experience .. ..	3	0	0	2	0	0
During the fourth six months' experience .. ..	3	10	0	2	5	0
And thereafter in accordance with paragraph (i) of this subclause.						

(f) (i) Storemen, packers, porters employed in a chemist's shop shall be paid not less than the following rates of wages:—

	Per Week.		
	£	s.	d.
Under 16 years of age .. ..	1	0	0
16 to 16½ years of age .. ..	1	5	0
16½ to 17 years of age .. ..	1	10	0
17 to 17½ years of age .. ..	1	15	0
17½ to 18 years of age .. ..	2	0	0
18 to 19 years of age .. ..	2	7	6
19 to 20 years of age .. ..	2	17	6
20 to 21 years of age .. ..	3	10	0
Thereafter .. ..	5	0	0

(ii) Lift attendants employed in a chemist's shop shall be paid not less than £4 10s. per week: Provided that any female lift attendant employed on the coming into operation of this award may continue her present employment as long as she is paid not less than £2 17s. 6d. per week.

(g) Any worker of the age of twenty-one years and upwards shall be paid not less than the basic wage for the time being prevailing.

#### *General Orders under Rates of Wages Emergency Regulations 1940*

5. The two general orders made under the Rates of Wages Emergency Regulations 1940, and dated 9th August, 1940, and 31st March, 1942, respectively (and recorded in 40 Book of Awards 1153 and 42 Book of Awards 258), shall be deemed to be incorporated in this award and shall have effect according to their tenor.

#### *Terms of Employment*

6. (a) The employment shall be deemed to be a weekly employment except in the case of casuals, and no deduction from the weekly wage shall be made except for time lost through sickness or default of the worker.

(b) Seven days' notice shall be given to terminate an engagement, except in the case of casual hands or in the case of dismissal for serious misconduct. The period of notice in either case shall be exclusive of the whole or any part of the annual holiday required to be given in pursuance of this award.

#### *Proportion*

7. The proportion of unqualified assistants shall be one to each shop. Additional unqualified assistants may be employed in the proportion of one to each qualified assistant.

For the purposes of this clause the employer who is registered and substantially engaged in the business shall be deemed to be a qualified chemist for the computation of the proportion.

### *Holidays*

8. (a) The following shall be the recognized holidays: New Year's Day, the day following, Anniversary Day, Good Friday, Easter Monday, Anzac Day, the birthday of the reigning Sovereign, Labour Day, Christmas Day, and Boxing Day.

(b) If any of the above holidays are not generally observed in any district another holiday may be observed in lieu thereof: Provided that in no case shall the number of holidays be reduced by this clause.

(c) Should any of the above holidays, except Anzac Day, fall on a Sunday, then for the purposes of this award such holidays shall be observed on the following day.

(d) An annual holiday of two weeks on full pay shall be granted to each worker under this award on completion of each year of service, such annual holiday to be exclusive of holidays provided for in subclause (a) of this clause.

(e) Any worker not completing the full qualifying period in any year of service shall be granted pay in lieu of holidays in the same proportion according to the length of his service: Provided that during the first year's employment he shall be required to serve three months before this clause shall operate.

(f) For the purpose of the annual holiday under this award, service under the previous award shall count as service under this award.

### *Payment for Holidays and Overtime*

9. (a) Except as provided in subclause (b) of this clause, all time worked in any one day in excess of the ordinary hours prescribed in clause 3 shall be paid for at the rate of time and a half for the first three hours and thereafter at double time rates: Provided that the minimum rate of payment shall be 1s. 6d. per hour.

Overtime shall be calculated on a daily basis: Provided, however, that, subject to sections 21 and 23 of the Shops and Offices Act, 1921-22, any time worked in excess of forty-four hours per week shall be paid for at the rate of time and a half.

A worker who is called upon to work overtime shall be paid 1s. 9d. tea-money.

(b) For work done between seven and nine o'clock in the evening on the statutory closing-day, workers shall be allowed double time off within seven days thereafter.



(c) Any work done on Sundays or on any of the holidays mentioned in clause 8 or holidays observed in lieu thereof shall be paid for at double rates. The said payments shall be in addition to the ordinary weekly wage.

(d) Nothing in this clause shall apply to any assistant engaged specially to do work in an all-night pharmacy, but assistants employed in such shops shall receive not less than the minimum rates of wages as prescribed by this award.

#### *Payment of Wages*

10. Wages shall be paid in cash not later than Wednesday of each week up to the night preceding the day of payment. Should a holiday fall on the pay-day, then payment shall be made on the working-day previous to the holiday.

#### *Special Uniforms*

11. Where white coats are required by the employer to be worn by workers, the employer shall launder same or, at the option of the employer, pay for same to be laundered.

#### *Wages and Time Book*

12. (a) The occupier of a shop in which one or more shop-assistants are employed shall at all times keep, in the prescribed form, or in such other form as may be approved by the Inspector of Awards, a record in English (called "the wages and time book") showing, in the case of each assistant, (1) the name of the assistant, together with his age if under twenty-one years of age; (2) the kind of work on which he is usually employed; (3) the hours during which he has actually been employed on each day, showing the starting and finishing time each day; (4) the wages paid on each pay-day, and the date thereof; and (5) such other particulars as are prescribed by regulations.

(b) The entry of the particulars hereinbefore referred to, or a memorandum in writing containing such particulars, shall be signed by the assistant at the time of payment of his wages, and such signature shall operate as a receipt for such payment.

(c) The wages and time book in use for the time being, and any such book used within the preceding two years, shall at all times be open to the inspection of an Inspector of Awards.

(d) Every assistant who fails to sign the record as provided in this clause or who wilfully signs an incorrect record is liable to a fine not exceeding £5.

(e) An Inspector of Awards may at any time require the occupier to verify the entries in the wages and time book in such form as may be prescribed.

#### *Under-rate Workers*

13. (a) Any worker who considers himself incapable of earning the minimum wage fixed by this award may be paid such lower wage as may from time to time be fixed, on the application of the worker after due notice to the union, by the local Inspector of Awards or such other person as the Court may from time to time appoint for that purpose; and such Inspector or other person in so fixing such wage shall have regard to the worker's capability, his past earnings, and such other circumstances as such Inspector or other person shall think fit to consider after hearing such evidence and argument as the union and such worker shall offer.

(b) Such permit shall be for such period, not exceeding six months, as such Inspector or other person shall determine, and after the expiration of such period shall continue in force until fourteen days' notice shall have been given to such worker by the secretary of the union requiring him to have his wage again fixed in manner prescribed by this clause: Provided that in the case of any person whose wage is so fixed by reason of old age or permanent disability it may be fixed for such longer period as such Inspector or other person shall think fit.

(c) Notwithstanding the foregoing, it shall be competent for a worker to agree in writing with the president or secretary of the union upon such wage without having the same so fixed.

(d) It shall be the duty of the union to give notice to the Inspector of Awards of every agreement made with a worker pursuant hereto.

(e) It shall be the duty of an employer, before employing a worker at such lower wages, to examine the permit or agreement by which such wage is fixed.

#### *Reference*

14. (a) Each employee on leaving or being discharged from his or her employment shall, on application, be given within twenty-four hours thereafter a reference in writing stating the position held and length of service.

(b) Original reference shall remain the property of the employee and shall be returned within forty-eight hours after engagement.

*Right of Entry*

15. The secretary or other authorized representative of the union of workers shall, with the consent of the employer (which consent shall not be unreasonably withheld), be entitled to enter during working-hours upon the premises or works and there interview any workers, but not so as to interfere unreasonably with the employer's business.

*Notification*

16. Employers shall on request, but not oftener than once a month, supply to the secretary of the union a list of names of all employees.

*Workers to be Members of Union*

17. (a) Subject to the provisions of section 18 (5) of the Industrial Conciliation and Arbitration Amendment Act, 1936, it shall not be lawful for any employer bound by this award to employ or to continue to employ in any position or employment subject to this award any adult person who is not for the time being a member of an industrial union of workers bound by this award.

(b) For the purposes of subclause (a) of this clause a person of the age of eighteen years or upwards, and every other person who for the time being is in receipt of not less than the minimum rate of wages prescribed by this award for workers of the age of twenty-one years and upwards, shall be deemed to be an adult.

(NOTE.—Attention is drawn to subsection (4) of section 18 of the Industrial Conciliation and Arbitration Amendment Act, 1936, which gives to workers the right to join the union.)

*Scope of Award*

18. This award shall operate throughout the Northern, Taranaki, Wellington, Marlborough, Nelson, Westland, Canterbury, and Otago and Southland Industrial Districts.

*Term of Award*

19. This award shall come into force on the 25th day of October, 1943, and shall continue in force until the 25th day of October, 1945.

In witness whereof the seal of the Court of Arbitration hath hereto been put and affixed, and the Judge of the Court hath hereunto set his hand, this 14th day of October, 1943.

[L.S.]

A. TYNDALL, Judge.

## MEMORANDUM

The principal matters referred to and settled by the Court related to application of award, definitions, hours of work, all wage rates, travelling-expenses, board allowance, proportion, terms of employment, apprentices, holidays, overtime, special uniforms, closing of shops, and term of award.

The application under section 58 of the Industrial Conciliation and Arbitration Act, 1925, for the hearing of the dispute by a Council of Conciliation was filed with the Clerk of Awards before the 15th December, 1942; consequently, the Court in making the award is not required to have regard to the Economic Stabilization Emergency Regulations 1942 (Regulation 43A (2)).

The Court was asked to insert in the award a complete code fixing the terms and conditions for apprentices. Prior to the Apprentices Act, 1923, the Court had jurisdiction to insert provisions relating to apprentices in awards. Section 17 (1) of the Apprentices Act, 1923, directed that no provision relating to apprentices should be made in any award made after the coming into operation of the Act, while section 5 of the Act authorized the Court to make such apprenticeship orders as it thought fit prescribing the wages, hours, and other conditions of employment to be incorporated in contracts of apprenticeship. Section 19 of the Apprentices Amendment Act, 1930, however, provided that nothing in the Apprentices Act, 1923, should apply to any apprentice serving under articles of apprenticeship of any of the classes referred to in section 30 of the Pharmacy Act, 1908, or to the employer of such apprentice. The Pharmacy Act, 1908, was repealed by section 46 (1) of the Pharmacy Act, 1939. Section 11 (1) of the Pharmacy Act, 1939, provides that articles of apprenticeship must be approved by the Pharmacy Board, while section 44 of the Act empowers the Governor-General by Order in Council to make regulations for a number of purposes, one of which is set out in subsection (2) (e) as follows:—

Regulating the employment and training of apprentices by chemists, the terms and conditions of contracts of apprenticeship, and the approval of such contracts by the Board; prescribing conditions upon or subject to which contracts of apprenticeship may be approved by the Board; and providing for the withdrawal of the Board's approval of contracts of apprenticeship, for limiting the number of contracts that may be approved by the Board in any year, and for the registration of contracts of apprenticeship.

Despite the above provisions, it is suggested that the Court has jurisdiction to prescribe in an award the wages, hours, and other conditions of employment to be incorporated in contracts of apprenticeship. We are far from satisfied that this is the true position, or that the Legislature intended that it should be the position. If it did, then it adopted most extraordinary methods of expressing its intention. In view of all the circumstances, we decline to incorporate provisions for apprentices in the award.

Certain Hospital Boards were cited as respondents, but have been struck out of the list of parties, as we are not satisfied that at the time the dispute was filed the membership rules of the appropriate unions were wide enough to cover chemists' assistants in hospital dispensaries.

Wages of managers and qualified assistants have been increased in recognition of the qualifications which these workers are required to possess and in consideration of the fact that their ordinary hours are forty-four per week. The wages of other workers have been brought into line with the wages prescribed for shop-assistants in the New Zealand (except Northern Industrial District) Retail-shop Assistants' award (recorded in 42 Book of Awards 865). Managers are made subject to the provisions of the award in the same manner as branch managers and departmental managers are covered in the Retail-shop Assistants' awards.

Mr. Prime is not in agreement, and his dissenting opinion follows.

A. TYNDALL, Judge.

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#### DISSENTING OPINION OF MR. PRIME

I dissent from this award.

The further restrictions imposed and the increased wages awarded are greater than are warranted on the evidence submitted.

In particular, I disagree with the decision to include managers so that they will be compelled to be members of the union. I consider it to be quite wrong in principle to compel a manager to be a member of the same union as the workers he controls. In many awards provision is made for the exemption of workers who are in responsible positions and who are in receipt of remuneration above a certain margin over the award rate for the classes of workers generally covered by the award. Such a provision, at least, should have been included in this award.