

**AUCKLAND (TWENTY-FIVE-MILE RADIUS) FRUIT- AND
VEGETABLE-SHOP ASSISTANTS.—AWARD**

In the Court of Arbitration of New Zealand, Northern Industrial District.—In the matter of the Industrial Conciliation and Arbitration Act, 1925, and its amendments; and in the matter of an industrial dispute between the Auckland Amalgamated Society of Shop-assistants' (other than Butchers', Grocers', Hairdressers', and Chemists' Assistants)

Industrial Union of Workers (hereinafter called "the union") and the undermentioned persons, firms, and companies (hereinafter called "the employers") :—

Indians

Hygienic Fruit Store, Otahuhu, Auckland.
 Jwan, C., 409 Mount Eden Road, Mount Eden, Auckland.
 Kala, L., 175 Sandringham Road, Sandringham, Auckland.
 Lalla, D., 3 Park Road, Grafton, Auckland.
 Morah, B. J., 580 Dominion Road, Mount Eden, Auckland.
 Maranji, P., 631 Manukau Road, Epsom, Auckland.
 Mara, R., 224 Queen Street, Onehunga, Auckland.
 Nathu and Sons, 229 New North Road, Eden Terrace, Auckland.
 Odhav, D., 140 Richmond Road, Auckland.
 Patel, 60 Church Street, Devonport, Auckland.
 Ranchod, P., 220A Jervois Road, Herne Bay, Auckland.

Chinese

Ah Chee, R., 166 Green Lane Road, Auckland.
 Ah Chee, C., 512 Broadway, Newmarket, Auckland.
 Chan, A., 240 Dominion Road, Mount Eden, Auckland.
 Chan, S. Y., 924 New North Road, Mount Albert, Auckland.
 Choy, N., 394 Khyber Pass Road, Newmarket, Auckland.
 Hoong, G. G., 60 Rosebank Road, Avondale, Auckland.
 Kee, Quin, 636 Dominion Road, Mount Eden, Auckland.
 Kam Wong, Belmont, Takapuna, Auckland.
 Kee, Fong, 130 Karangahape Road, Auckland.
 Lowe, C. F., St. Helier's Bay, Auckland.
 Loy, Lee, New Lynn, Auckland.
 Lee, W. F., 600 Great North Road, Grey Lynn, Auckland.
 Luey, G. Y., 45 Victoria Street, Devonport.
 Logan, 571 Sandringham Road, Sandringham, Auckland.
 Shue, H., 129 Parnell Road, Parnell, Auckland.
 Kwong On and Co., 365 Remuera Road, Remuera, Auckland.
 Wong, B. F., 61 Park Road, Grafton, Auckland.
 Wai, D. C., King Street, Pukekohe.
 Wah Jang and Co., Ltd., 31 Queen Street, Auckland.

Europeans

Benjamin, J., 221 Jervois Road, Herne Bay, Auckland.
 Barrett, L., 385A Manukau Road, Epsom, Auckland.
 Clendon, H., The Strand, Takapuna, Auckland.
 Frater, J. W., Papakura, Auckland.
 Harper, J., 97 Victoria Road, Devonport, Auckland.
 Jobes, Mrs. J., 207 Great South Road, Auckland.
 Jonkers, L. K., 936 New North Road, Mount Albert, Auckland.
 Lynch, J., Great South Road, Otahuhu, Auckland.
 Mills, R., 734 Dominion Road, Mount Roskill, Auckland.
 Roe, J., 126 Great North Road, Grey Lynn, Auckland.
 Stoddard, A., 61 Queen Street, Auckland.
 Stevens, C., 214 Symonds Street, Auckland.
 Sadgrove, F., 41 Point Chevalier Road, Point Chevalier, Auckland.
 Taggart, W., 150 Calliope Road, Stanley Bay, Auckland.
 Therkleston, L. J., St. George Street, Papatoetoe.
 Tanners Ltd., Queen's Arcade, Customs Street East, Auckland.
 Uhlman, 193 Symonds Street, Auckland.
 Zainey, J., Burke Street, Newmarket, Auckland.

Hawkers

Tong, Willie, Rangiatea Road, Epsom, Auckland.
Wong Doo, Melrose Road, Mount Roskill, Auckland.
Wong Kam, Northcote, Auckland.

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 5th day of November, 1945, and shall continue in force until the 5th day of November, 1946, 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 25th day of October, 1945.

[L.S.]

A. TYNDALL, Judge.

SCHEDULE

Industry to which Award applies

1. This award shall apply to the retail fruit and/or vegetable industry.

Interpretation

2. For the purpose of this award, every person shall be deemed to be a shop-assistant who is engaged in any capacity in or for those employers and other persons who carry on business by selling or offering for sale by retail in a shop or elsewhere fruit or vegetables and are bound by the provisions of this award. Nothing in this award shall apply to grocers' assistants covered by the Grocers' Assistants' award for the time being in force in the district.

Hours of Work

3. (a) The hours of work shall not exceed forty-four in any one week, to be worked on five and a half days in each week.

(b) Not more than eight hours shall be worked by a worker on each of four days in each week between the hours of 8 a.m. and 6 p.m., on one day of the week eleven hours between 8 a.m. and 9 p.m., and one day four hours between 7.30 a.m. and 12 noon. All hours shall be worked continuously, with not more than one hour for dinner on four days of the week, and one hour for dinner and one hour for tea on the day of the late night.

(c) Each employer shall notify the union in writing within seven days of the coming into operation of this award, and immediately after the employment of any new worker, of the names of all such workers, together with their starting and finishing hour on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday, and the hours when so fixed shall continue in force for a period of not less than six months, and thereafter until such time as an alteration is notified to the union. The fixing of all such hours shall in all cases be for not less than six-monthly periods, unless by agreement in writing with the union.

(d) For the purpose of calculating the hours of work, each of the holidays hereinafter mentioned shall be deemed to be a day worked for the number of hours usually worked on that day of the week, although no work shall have been actually done on such holiday.

Wages

4. The minimum rates of wages payable to shop-assistants shall be:—

	Males.			Females.		
	Per Week.			Per Week.		
	£	s.	d.	£	s.	d.
(a) Commencing without previous experience when under sixteen years of age—						
First six months	1	5	0	1	5	0
Second six months	1	10	0	1	9	0
Third six months	1	16	0	1	14	0
Fourth six months	2	1	6	1	18	6
Thereafter, in accordance with subclause (g).						
(b) Commencing without previous experience when between sixteen and seventeen years of age—						
First six months	1	13	6	1	11	0
Second six months	1	19	0	1	15	6
Third six months	2	15	0	2	0	0
Fourth six months	2	15	0	2	4	6
Thereafter, in accordance with subclause (g).						
(c) Commencing without previous experience when between seventeen and eighteen years of age—						
First six months	2	14	6	1	14	6
Second six months	2	14	6	2	0	0
Third six months	3	0	6	2	5	6
Fourth six months	3	0	6	2	11	6
Thereafter, in accordance with subclause (g).						
(d) Commencing without previous experience when between eighteen and nineteen years of age—						
First six months	3	0	6	2	2	6
Second six months	3	0	6	2	8	0
Thereafter, in accordance with subclause (g).						
(e) Commencing without previous experience when between nineteen and twenty years of age—						
First six months	3	7	6	2	11	6
Second six months	3	7	6	2	16	6
Thereafter, in accordance with subclause (g).						

(f) Commencing without previous experience when between twenty and twenty-one years of age—	Males. Per Week.	Females. Per Week.
	£ s. d.	£ s. d.
First year	4 2 6	2 18 0
Thereafter, in accordance with subclause (g).		
(g) Between sixteen and seventeen years of age—		
First six months	2 5 0	2 2 0
Second six months	2 10 6	2 6 0
Between seventeen and eighteen years of age	2 16 6	2 11 6
Between eighteen and nineteen years of age	3 1 6	2 15 6
Between nineteen and twenty years of age	3 10 0	3 2 0
Between twenty and twenty-one years of age	4 5 0	3 6 0
Twenty-one years of age and over	5 17 0	3 11 0
(h) Any worker who is in charge of a shop or department of shop shall receive £1 per week additional to the minimum rate prescribed for male or female workers twenty-one years of age and over.		

Casual Workers

5. Casual hands shall be paid not less than 3s. 3½d. per hour in the case of adult males, 2s. 3½d. per hour in the case of junior males, 2s. 3½d. per hour in the case of adult females, and 1s. 9½d. per hour in the case of junior females, with a minimum of six hours on any day on which such worker shall be employed.

Overtime

6. (a) All time worked in any one day outside or in excess of the ordinary hours prescribed in this award shall be paid for at the rate of time and a half for the first three hours and thereafter double time rates. Overtime shall be calculated on a daily basis. The minimum rate of payment shall be 1s. 9½d. per hour.

(b) For the purpose of calculating overtime, any overtime under half an hour shall count as half an hour, and if over half an hour but under one hour, as one hour, worked.

(c) Overtime shall not be worked without the previous written consent of the Inspector of Factories.

(d) Notice shall be given prior to noon on the same day to any worker required to work overtime, and such worker shall be paid 2s. tea-money.

The provisions of clause 7 hereof increasing rates of remuneration shall not apply to the tea-money payment provided for in this subclause.

Increase in Rates of Remuneration

7. Except where otherwise provided, the two general orders made under the Rates of Wages Emergency Regulations 1940, and dated the 9th August, 1940, and the 31st March, 1942, respectively, shall be deemed to be incorporated in this award and shall have effect according to their tenor.

Proportion

8. (a) The proportion of juniors to seniors shall not exceed one junior to one senior. A senior is an assistant in receipt of not less than £5 17s. per week if a male, and not less than £3 11s. per week if a female.

(b) For the purpose of this clause, an employer who is actively engaged in the management of his shop shall be deemed to be a senior.

(c) For the purpose of this clause, where an employer carries on the business of more than one shop, each shop shall be deemed to be a separate business.

Holidays

9. (a) The following shall be allowed as holidays without deduction from wages: Christmas Day, New Year's Day, Good Friday, Easter Monday, Labour Day, the Sovereign's Birthday, and Anniversary Day.

(b) Should any of the above holidays fall on a Sunday, then for the purpose of this award such holidays shall be observed on the following Monday.

(c) Any work done on Sundays or on any of the above-mentioned holidays 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) No payment in addition to the weekly wage shall be made to any employee on account of any holiday which falls on a day which is not ordinarily a working-day except for work actually performed on such day.

Annual Holidays

10. (a) A holiday of two weeks on full pay shall be granted to each worker covered by this award on completion of each year of service, and at a time to be mutually arranged between the employer and the worker concerned: Provided that, so long as this award prescribes only the statutory holidays as provided for in clause 9 (a), the annual leave specified above shall be increased by three days on full pay. Such holiday shall be exclusive of the holidays specified in clause 9 (a). Wages for the period of the said holiday shall be paid before the worker leaves for his or her holiday.

(b) 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 service. The employer shall allow the holiday to the worker within six months after he has become entitled to it.

(c) Provided that if the worker and the employer so agree, the holiday may be taken in two periods of one week each and the holiday or any such part thereof may be taken wholly or partly in advance of due date.

(d) A worker shall not be required to go on annual leave on not less than fourteen days' notice except on his or her own request or except in case of exceptional circumstances, when mutual arrangement may be made.

Weekly Employment

11. (a) The employment shall be deemed to be a weekly employment, and no deduction from wages shall be made except for the worker's sickness or default or through accident.

(b) Not less than seven days' notice shall be given by either party of the termination of the employment, except in the case of casual hands; but nothing in this clause shall prevent an employer from summarily dismissing any worker for serious misconduct.

(c) 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.

References

12. Each worker on leaving or on being dismissed from his or her employment shall, on request, be given within forty-eight hours thereafter a reference in writing stating the position held and the length of service.

Time and Wages Book

13. (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 (i) the name of the assistant, together with his age if under twenty-one years of age (such assistant shall sign the original entry as correct); (ii) the kind of work on which he is usually employed; (iii) the hours during which he has actually been employed on each day, showing the starting and finishing time each day; (iv) the wages paid on each pay-day, and the date hereof; (v) such other particulars as are prescribed by regulations.

(b) The entries of the particulars hereinbefore referred to, or a memorandum in writing containing such particulars, shall be signed by the assistant at the time of the 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 the 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.

Payment of Wages

14. All wages and overtime shall be paid weekly during working-hours, and in cash, not later than Wednesday. Should a holiday fall on any regular pay-day, wages shall be paid on the working-day previous to the holiday.

Special Uniforms

15. Where the employer requires the workers to wear smocks, special coats, or uniforms, the employer shall provide and launder same free.

Right of Entry

16. 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.

Workers to be Members of Union

17. (a) Subject to the provisions of subsection (5) of section 18 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.

(c) Every person who, being obliged to become a member of any union by the operation of the foregoing provisions, fails to become a member of that union when requested so to do by his employer or any officer representative of the union commits a breach of this award, and shall be liable accordingly.

(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.)

Under-rate Workers

18. (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 wage, to examine the permit or agreement by which such wage is fixed.

Closing of Shops

19. (a) In exercise of the powers vested in the Court by section 69 of the Shops and Offices Act, 1921-22, as amended by section 17 of the Shops and Offices Amendment Act, 1927, it is ordered that all shops carrying on any of the businesses covered by this award within any district to which section 31 of the Shops and Offices Act applies or may hereafter be applied, shall be closed as follows: from the hour of 6 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays, and Saturdays, and from the hour of 9 p.m. on Fridays.

(b) Should any of the holidays mentioned in clause 9 fall on the day of the late night, the shop may be kept open and assistants may be employed until 9 p.m. on the working-day immediately preceding such holiday mentioned.

(c) All the said shops shall be closed from the hour of 7 a.m. on each of the days prescribed under clause 9 of this award as holidays (including days lawfully observed as holidays in lieu of any prescribed). This clause shall apply to any delivery of fruit or vegetables or any cart from which fruit or vegetables are sold.

Application of Award

20. 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 that portion of the industrial district to which this award relates.

Scope of Award

21. This award shall operate throughout that part of the Northern Industrial District lying within a radius of twenty-five miles from the Chief Post-office in the City of Auckland.

Term of Award

22. This award shall come into force on the 5th day of November, 1945, and shall continue in force until the 5th day of November, 1946.

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 25th day of October, 1945.

[L.S.]

A. TYNDALL, Judge.

MEMORANDUM

The assessors in Conciliation Council arrived at a complete settlement of this dispute except as to the date of coming into force of the award.

Included in the terms of settlement is clause 19, which purports to fix the closing-hours of shops in a certain area carrying on the businesses covered by the award.

Mr. Anderson, claiming to appear on behalf of fifty-three shop-keepers, objected to the incorporation in the award of clause 19 of the settlement, and also objected to a change in clock-hours proposed in clause 3 (b).

The objections were based on the following grounds:—

- (1) That no agreement was reached on the aforesaid matters by the parties, the terms of settlement representing the agreement of the assessors only.
- (2) That clause 19 in the form proposed was outside the powers of the Court.
- (3) That, having regard to the convenience of the public, the Court should not order the closing of shops—
 - (a) At 9 p.m. on Friday:
 - (b) At 6 p.m. on Saturdays:
 - (c) From the hour of 7 a.m. on certain holidays.

Miss Pilkington, appearing on behalf of the Auckland Branch of the New Zealand Housewives' Association, Incorporated, also objected to the further curtailment of shopping-hours proposed in clause 19.

We have considered the grounds for the objections raised by Mr. Anderson, and heard evidence and argument from all sides. We do not think the first ground can be upheld, as the assessors appointed to the Conciliation Council appear to have been truly and fairly representative of the parties to the dispute. We agree with Mr. Anderson's second submission, and have redrafted the clause to meet the objection. With reference to Mr. Anderson's third submission, and to Miss Pilkington's objection, the Court, in fixing closing-hours, is required by section 69 of the Shops and Offices Act to have regard to the convenience of the public. We do not consider that the closing-hours agreed upon in Conciliation Council, if put into operation, are likely in general to affect unreasonably the convenience of the public, and accordingly we have incorporated them in the award. We would draw attention, however, to the right given by section 19 of the Shops and Offices Amendment Act, 1927, to the occupier of any shop to apply to a Magistrate for total or partial exemption from the application of such a closing-hours clause.

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

A. TYNDALL, Judge.

DISSENTING OPINION OF MR. PRIME

I cannot agree that the convenience of the public will not be unreasonably affected by the curtailment of shopping-hours brought about by the closing-hours ordered by this award. It is true that a considerable section of shopkeepers have agreed with the union that the hours during which shops may be open should be shortened, and one may sympathize with their desire to obtain more leisure for themselves without necessarily agreeing that the securing of such leisure will not have an adverse effect on the convenience of the buying public. Incidentally, it should be stressed that the hours of work of employees are not affected by this question at all. We have been told before by fruiterers that curtailment of shopping-hours tends to bring about more waste in the very perishable products handled by this trade; and I believe this to be true. More waste means, in time, higher prices; and prices of fruit and vegetables are already higher than they should be in this country, where the climate and soil are conducive to easy and plentiful production.