

NEW ZEALAND **TRAMWAY EMPLOYEES.**—DECISION OF  
EMERGENCY DISPUTES COMMITTEE

In the matter of the Strike and Lockout Emergency Regulations 1939; and in the matter of a dispute between the New Zealand Tramways Authorities' Employees' Industrial Union of Workers, of the one part, and the Dunedin City Corporation (Tramways Department) and other authorities employing members of the said union, of the other part.

DECISION OF EMERGENCY DISPUTES COMMITTEE

WHEREAS a dispute has arisen between the New Zealand Tramways Authorities' Employees' Industrial Union of Workers, of the one part, and the Dunedin City Corporation (Tramways Department) and other authorities employing members of the said union, of the other part, relating to the following matters, namely:—

- (1) Appointment and classification of drivers and operators:
- (2) Matter of payment for shift-workers who do not normally work on Sundays and did not work on Anzac Day:
- (3) Clarification of the decision of the Disputes Committee in regard to dispute No. 19 (platelaying gang) and dated 2nd April, 1948:

And whereas, in exercise of the power conferred upon him by the Strike and Lockout Emergency Regulations 1939, the Minister of Labour has appointed the following persons to be an Emergency Disputes Committee for the purpose of deciding such dispute—namely, W. B. Richards, E. A. Whitlow, and P. A. Hansen, as representatives of the workers, J. F. Fardell, C. R. Gribble, and L. B. Hutton, as representatives of the employers, and D. J. Dalglish, Deputy Judge of the Court of Arbitration, as Chairman—and has referred the dispute to the Committee accordingly: And whereas the Committee has met and considered the dispute: Now, therefore, the Chairman of the Committee doth hereby declare that the following is the decision of the Committee:—

#### 1. APPOINTMENT AND CLASSIFICATION OF DRIVERS AND OPERATORS

(a) *Drivers*.—Clause 25 (a) (2) of the decision of the 24th September, 1947 (47 Book of Awards 2145), provides as follows:—

(2) A driver of a tram-car shall be deemed to be appointed when first he acts as such in traffic, and from that date he shall be paid at drivers' rates of pay, except in the case of a reduction in the number required, when he shall go back to his former position and pay.

It is claimed by the union that the effect of this clause is that as soon as a conductor who has his electric-tram-driver's certificate acts as a driver in traffic he shall from that time be deemed to be appointed as a driver and shall be classified and paid as a driver. On behalf of the employers it is claimed that there may be occasions when it is necessary, in order to maintain the scheduled services, to use a conductor as a driver on a purely temporary basis until arrangements are made to provide a regular driver to meet the unexpected circumstances of the case. The employers claim that clause 20 of the decision of 24th September, 1947, provides for such a case. Clause 20 (a) is as follows:—

(a) Any worker required to perform other than his normal duties shall receive the rate of pay for the higher grade of work when so employed, irrespective of whether the higher rate is that paid for his normal employment or for the work upon which he is temporarily employed. In no case shall the additional payment be for a lesser amount than the equivalent of one hour at the higher rate.

In my opinion clause 25 contains special provisions relating to drivers and operators and clause 20 has no application.

Accordingly, as soon as a person acts as a driver of a tram-car he shall be deemed to have been appointed as a driver as from that time. Thereafter he should be classified as a driver and paid at drivers' rates of pay. It must be pointed out, however, that at any time it is competent for

the employer, in accordance with the terms of clause 25 (a) (2), to fix a reduced number as the number of drivers required. In such a case one or more of the drivers would thereupon go back to their former positions.

Under the Tramways Act there is a right to appeal to the Tramways Appeal Board against denial of promotion, and therefore if a person qualified as a driver becomes appointed as a driver over the head of any other person senior to him that other person would have a right of appeal, as a result of which the person who became appointed as a driver might have to go back to his former position and pay.

(b) *Operators (other than Motor-omnibus).*—Clause 25 (b) of the decision of 24th September, 1947, which relates to the one-man-tram-car operators and trolley-omnibus operators provides, *inter alia*, that “appointment shall be in order of seniority by length of service in the employment of the particular employer concerned, and shall date from the day upon which the one-man-car operator or trolley-omnibus operator first acts in that capacity in traffic.”

This clause contemplates some action on the part of the employer making or indicating an appointment as an operator. The action, for example, may be putting the employee's name in the roster as an operator, or inserting his name in a list of persons available to be used as an operator, or it may be the increasing of the rate of pay. But in whatever manner the appointment is made or indicated it takes effect from the date when the operator first acts as such in traffic.

Although the wording is quite different from the wording in clause 25 (a) (2), the effect, in my opinion, is the same.

Once an operator acts as such in traffic, therefore, he becomes entitled to appointment if his appointment has not already been made or indicated by the employer. Even if his appointment is not made for some weeks, it must date back to the date when he first acted in traffic.

But his appointment is liable to be upset on an appeal to the Tramways Appeal Board by a person who is senior by length of service and who has been passed over.

Again, if the employer decides that it has too many operators, it is entitled to reduce the number of operators. This right exists at common law, and nothing is written into the decision of 24th September, 1947, which prohibits the exercise of that right.

The case of certain trolley-omnibus operators in Auckland was submitted to the Committee by agreement. The operators in question acted as such from the issue of the interim decision of the 30th July, 1947, until about December, 1947, when the Auckland Transport Board decided that it did not require their services as such operators. In the meantime these operators were used partly as tram-drivers and partly as trolley-omnibus operators, being regularly rostered for duty as operators for meal reliefs and for Friday evenings. These operators are entitled to be paid at the rates for trolley-omnibus operators during the period mentioned, even although during that time they were employed part-time as tram-drivers.

(c) *Operators (Motor-Omnibus)*.—Clause 25 (c) of the decision of 24th September, 1947, provides, *inter alia*, as follows:—

Those qualified for appointment to the position of motor-omnibus operator shall be so appointed in order of seniority in the service, and any such appointment shall date from the day the operator acts as such in traffic.

Although the wording of this clause is slightly different from the wording of clause 25 (b) in respect of appointments, the effect is the same as the effect of clause 25 (b).

#### *Position in Dunedin*

The effect of the foregoing decision in relation to the position in Dunedin is that the sixty-three employees who have not been rostered as drivers or operators but who have been used as such are entitled to be classified and paid as drivers or operators, as the case may be. It is, however, competent for the Dunedin City Council to determine that they require fewer drivers and operators, and if the Council does so, then from that time appropriate numbers of drivers and operators shall go back to their former positions and pay until they are again used as drivers or operators, as the case may be.

#### 2. MATTER OF PAYMENT FOR ANZAC DAY TO CERTAIN SHIFT-WORKERS

The question is whether shift-workers who do not normally work on Sundays and who did not work on Anzac Day (which fell on a Sunday) should receive payment for Anzac Day.

Clause 24 (d) of the decision of the 24th September, 1947, is as follows:—

(d) When Good Friday or Anzac Day or Christmas Day occurs while a worker is absent on holiday leave, or when any such day falls on a worker's normal "day off," the worker shall receive an additional day as a holiday on "full pay" or an extra day's pay, whichever conforms to the requirements of the employer. In the case of Dunedin, the provisions of this clause shall apply also to Labour Day.

Certain shift-workers—*e.g.*, workers on night shift for car-cleaning—are rostered in accordance with clause 5 (d) of the decision of 24th September, 1947, so that they are not normally required to work on a Sunday. The answer to this question, depends on whether Sunday can be regarded as being such a worker's normal "day off." Days off are dealt with in clause 13 of the said decision, and from that clause it is clear that the term "day off" is one applicable in respect of shift-workers generally and not merely as to traffic staff as claimed by the employers.

Accordingly, the benefit of clause 24 (d) extends with respect to shift-workers who do not normally work on Sunday and who did not work on last Anzac Day.

### 3. CLARIFICATION OF DECISION ON DISPUTE No. 19 (PLATELAYING GANG)

Dispute No. 19 and the decision of the Emergency Disputes Committee thereon dated the 2nd day of April, 1948, is as follows:—

#### DISPUTE No. 19 (DUNEDIN)

Method of payment of platelaying gang, the men concerned being all able to carry out all the operations associated with track work.

*Ruling:* The men are to be considered as employed "in platelaying gang" when the gang goes out to carry out a job which includes work by the gang in the nature of laying, renewing, or repairing rails, and the 1½d. per hour extra must be paid for all work done by men in that gang on that job.

Clarification of this decision is sought.

The term "repairing rails" does not cover the actions of spiking, bonding, or jointing, all of which are specially provided for in clause 3 (c) of the decision of 24th September, 1947; and the term "repairing rails" does not cover the action of packing-up under the rails.

The decision in dispute No. 19 above is being correctly observed when all the men in the gang are paid 1½d. per hour extra during the whole of the time the gang is engaged on a job which includes work in the nature of laying, renewing, or repairing rails as explained above. It is quite possible that

a gang may be engaged in work of that nature for several days and then be sent out on a job of permanent-way repairing. While engaged on a job of permanent-way repairing the members of the gang are not entitled to the extra 1½d. per hour as members of a platelaying gang. If, however, any members of the gang are required while on a permanent-way repairing job to do work as spikers, bondsmen, or jointsmen, those members are entitled to an extra 1½d. per hour while so engaged. In order to avoid the necessity of keeping special time-sheets, the Dunedin City Corporation (Tramways Department) has paid to *all* the members of one of its gangs 1½d. per hour for one-half of the time they have been engaged on permanent-way repairing (as distinct from platelaying), on the assumption that such a payment adequately remunerates all the members of the gang who, while the gang has been working on permanent-way repairs, have done any spiking, bonding, or jointing (to the extent of at least 1½d. per hour extra while so engaged).

This arrangement seems a fair and reasonable one and no member of the gang should suffer any financial loss. However, if a detailed examination of time-sheets shows that any of the members of the gang are engaged on spiking, bonding, and jointing for more than one-half of the time that the gang is doing permanent-way repairing, then an appropriate additional payment should be made to those workers.

Dated at Wellington, this 17th day of June, 1948.

D. J. DALGLISH, Chairman.

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