

NEW ZEALAND LIFE ASSURANCE AGENTS, CANVASSERS AND COLLECTORS—
APPEAL FROM DECISION OF DISPUTES COMMITTEE

In the Court of Arbitration of New Zealand, in the matter of the Industrial Conciliation and Arbitration Act 1954; and in the matter of the New Zealand Life Assurance Agents, Canvassers and Collectors Award, dated the 13th day of May 1957, and recorded in 57 Book of Awards 624.

JUDGMENT OF THE COURT DELIVERED BY TYNDALL, J.

THIS is an appeal by the Mutual Life and Citizens' Assurance Co. Ltd. from a decision of Mr H. M. Hopper, Conciliation Commissioner, in his capacity as chairman of a disputes committee set up under clause 14 of the New Zealand Life Assurance Agents, Canvassers and Collectors Award (57 Book of Awards 624).

The text of the decision is as follows:—

Whereas a dispute has arisen between the New Zealand Assurance Agents, Canvassers and Collectors Industrial Union of Workers, Wellington,

And the Mutual Life and Citizens Assurance Company Limited, Wellington, as to whether Mrs Thompson's debit is one "where the use of a motor-car is reasonably necessary under clause 6 (c) of the award".

And whereas in order to arrive at a settlement of the above dispute a Disputes Committee was set up under clause 14 of the award, and it was agreed by the parties that Mr H. M. Hopper, Conciliation Commissioner, Wellington, be appointed Chairman.

At a meeting held on Friday, November 22nd 1957, the following persons were present:

Representing the Employer:

Mr G. D. Browne, Melbourne.

Mr C. W. Dodds, N.Z. Manager of the Company.

Representing the Union:

Mr J. R. Scott, Wellington, National Secretary.

Mr C. W. Cameron, Wellington, Senior National Vice-President.

Clause 6 (c) of the award prescribes that:

"In addition to the allowance prescribed in subclause (a) hereof, a worker who is allotted a debit where the use of a motor car is reasonably necessary, and who uses his own car on the business of his employer, shall be paid an allowance at the rate of 6d. per mile in respect of all mileage travelled in connection with the business of the employer.

If the worker and employer cannot agree as to whether the use of a motor car is reasonably necessary, or if a dispute arises as to the mileage travelled in connection with the business of the employer, the difference or dispute shall be dealt with in the manner prescribed by clause 14 of this award."

The matter in dispute is whether a motor car is reasonably necessary for Mrs Thompson in the collecting and servicing of the debit allotted to her.

Mrs Thompson has been employed by the company for seven and a half years, and she has always used her own motor car in connection with the business of the employer.

Her territory comprises all that portion of the Hutt Valley extending from Gracefield in the south to the Taita Cemetery in the north and bounded by the railway line to the west.

The committee travelled over one Naenae portion of Mrs Thompson's debit which she does in one day, and the milage totalled nine miles. Mrs Thompson claims that she uses her car on the business of the company for approximately one hundred miles in each week.

The whole area is practically devoid of shelter, but the company contends that it can quite comfortably be done by riding a bicycle and using the train from Naenae to Woburn.

In this age of modern transport it is unrealistic and undignified to expect Mrs Thompson to ride a bicycle over such an extensive territory on the employers business.

In my opinion the use of a motor car is reasonably necessary for Mrs Thompson in the collection and servicing of the debit allotted to her.

Dated at Wellington this 26th day of November 1957.

(Signed) H. M. HOPPER,
Conciliation Commissioner
Chairman.

Mr G. D. Browne for the appellant made three main submissions:

- (1) That the chairman had wrongly interpreted clause 6 (c) of the award in that in reaching his decision he had taken the agent and not the debit as the criterion.
- (2) That the decision is based on figures which do not reflect the true position as to the milage necessarily travelled by the agent in connection with the business of the appellant.
- (3) That the decision is based on wrong premises such as for example the absence of shelter in the debit area, and considerations of human dignity.

We are disposed to agree with the first submission. Whether the use of a motor car in connection with any debit is reasonably necessary should be determined upon a consideration of the characteristics of the debit and not upon the personal circumstances or sex of the agent.

Concerning the second submission, it appears a reasonable inference that the decision was to some extent influenced by the finding of fact as the result of a test by the committee that the distance travelled by the agent over one Naenae portion of the debit in one day amounted to nine miles.

Evidence adduced by the appellant did not satisfy us that this figure should be rejected as an inaccurate or unfair assessment.

The chairman mentions that Mrs Thompson claims that she uses her car on the business of the company for approximately one hundred miles in each week, but there is no indication that his decision was based upon acceptance of her claim.

We think that absence of shelter in a debit is a relevant matter, but we doubt whether it should be given any weight for the purposes of the clause in the award for the reason that such a condition is likely to prevail in any suburban residential area.

As to the chairman's statement that it is unrealistic and undignified to expect Mrs Thompson to ride a bicycle, it should be noted that he directly associated his comment with the extensiveness of the territory, a characteristic of the debit which must be regarded as a relevant consideration. We infer that if the area of the debit had been much less, he would not necessarily have made the comment.

The chief superintendent of the appellant company gave evidence that for one week he personally had collected a debit in Blenheim half as large again in size as the debit operated by Mrs Thompson and had used a bicycle only for transport.

On the other hand the evidence showed that when the same superintendent worked for four weeks with Mrs Thompson on her debit in 1956, a motor car was continually used, the vehicle sometimes being a car owned by the company and at other times a car owned by Mrs Thompson.

Mr Browne submitted that the milage per week which Mrs Thompson claimed was travelled by her on the business of the company was more than three times as much as that which is reasonably necessary, and contended further that twenty miles per day would not be an unreasonable distance for an agent male or female to travel by bicycle upon the class of roads available in the Hutt Valley. Yet the evidence showed that Mrs Thompson had used her car on the business of the company ever since she commenced work as an agent, a period of seven and a half years.

Giving the best consideration we can to the question we have reached the conclusion that the use of a motor car on this particular debit is reasonably necessary within the meaning and intention of clause 6 (c) of the award, and that the decision of the chairman of the disputes committee should not be disturbed.

Mr Scott for the New Zealand Life Assurance Agents Canvassers and Collectors Industrial Union of Workers invited the Court in the event of the appeal being dismissed to indicate its opinion of the milage for which Mrs Thompson should be paid an allowance.

The Court declines to do so at this stage on the grounds that the question strictly is not before it.

The decision under appeal does not purport to determine the milage for which an allowance should be paid.

Dated this 6th day of May 1958.

[L.S.]

A. TYNDALL, Judge.