NEW ZEALAND (EXCEPT WESTLAND) **FREEZING WORKERS**—AMENDMENT OF AWARD

In the Court of Arbitration of New Zealand, Northern, Taranaki, Wellington, Marlborough, Nelson, Canterbury, and Otago and Southland Industrial Districts—In the matter of the Industrial Conciliation and Arbitration Act 1954: And in the matter of the New Zealand (Except Westland) Freezing Workers Award, dated the 21st day of December 1959, and recorded in 59 Book of Awards 1569.

Friday, the 29th day of April 1960

UPON hearing the application made by the New Zealand Freezing Works and Related Trades Industrial Association of Workers for amendment of the New Zealand (Except Westland) Freezing Workers' Award, dated the 21st day of December 1959, and upon being satisfied that all the original parties to the said award are desirous that it should be reviewed by the Court, and upon hearing the duly appointed representatives of the said parties, the Court, in pursuance and exercise of the powers vested in it by section 162 (1) (b) of the Industrial Conciliation and Arbitration Act 1954, and of every other power in that behalf thereunto enabling it, doth hereby order that the said award shall be and it is hereby amended by deleting the figures and words "30th day of June 1960" where they appear in the enacting part and in section 21 of the Schedule and substituting therefor in each case the figures and words "30th day of April 1960".

[L.S.] A. TYNDALL, Judge.

MEMORANDUM

On 21 December 1959 the Court made the New Zealand (Except Westland) Freezing Workers Award (59 Book of Awards 1569). The award declared that it should continue in force until 30 June 1960, the reasons for the unusually short term being explained in the memorandum.

On 28 January 1960 an application was filed for and on behalf of the New Zealand Freezing Works and Related Trades Industrial Association of Workers asking that the provisions of the award should be amended pursuant to section 162 (1) (b) of the Industrial Conciliation and Arbitration Act 1954.

The application was set down for hearing on 8 February 1960, but because of the intervention of an outside party which sought a writ of prohibition in the Supreme Court on the grounds that the application was invalid, the case did not proceed. The challenge to the jurisdiction of the Court of Arbitration was finally disposed of by the Court of Appeal on 28 March 1960.

After satisfying itself that all the parties to the award were desirous that it should be reviewed the Court of Arbitration heard the application on 5, 6, 7, and 8 April 1960.

The matters which the Court was asked particularly to review are wages, incorporation of the Court's general order, term of the award and a claim by the employers for the inclusion of a provision providing for the suspension of the minimum weekly payment (section 8) in certain circumstances.

The principal issues are the question of incorporation of the general order of 18 September 1959 and the proposal that section 8 should be varied. It should be pointed out that since 1 March 1960 the parties have had the opportunity to initiate proceedings for a new award by virtue of subsection two of section 135 of the Industrial Conciliation and Arbitration Act, and thus the provisions of the present award could by now have been in process of review by a Council of Conciliation.

The award provides for both time rates of wages and piecework rates.

After carefully considering all the evidence placed before it and the submissions of the parties, the Court has decided to make the following pronouncement in regard to incorporation.

If and when an industrial dispute relating to the freezing industry as defined in the current award made on 21 December 1959 is referred to the Court for settlement, the Court in making its award to supersede the current award will incorporate in certain rates of remuneration the effect of the general order of 18 September 1959.

With regard to time rates of wages the Court will follow the principles which it has already applied in making many awards and which are now well known.

With regard to piecework rates the Court is not in the position to declare the principles it will adopt because of the extraordinary circumstances prevailing in the freezing industry which were disclosed by the evidence.

Working conditions and the earnings of workers in the industry appear to be affected by innumerable private agreements, many of which have not even been committed to writing, and some of which are possibly invalid because of inconsistency with the provisions of the award. (It was alleged by witnesses for the Association of Workers that the secretary of the Patea union alone had recorded in his books over 200 signed agreements, but the witnesses were unable to say whether all the said agreements were in current operation.)

The question of the output of pieceworkers is a very important one in relation to incorporation. It seems to be common ground that practices designed to restrict the output of pieceworkers are in operation throughout the country. The term used in the industry in referring to these practices is "Tallies": The workers contend that tallies are in general operation as the result of agreement with the employers. The employers stoutly deny that they have been parties to any such agreement.

As to the size of the tallies that are in actual operation for different classes of work in the various districts and works, there was considerable conflict of evidence.

The imposition of tallies appears to have the effect of reducing the earnings of individual pieceworkers below the amount which it is possible to earn under the provisions of the award.

The Court is of the opinion that in view of the existence of such a large number of domestic agreements, the terms of the vast majority of which have not been disclosed to the Court, and of the practices which have grown up in the industry and which are not recognised by the award, the principles that should be observed in applying incorporation to piecework rates should be settled if at all possible by the parties in Conciliation Council.

At the end of the hearing the suggestion was made by the Judge that the Court might find it necessary to invoke the provisions of section 42 of the Industrial Conciliation and Arbitration Act, but now that the Court has made the above pronouncement we consider that the future of the industry will be best served if the parties themselves determine the manner in which incorporation is to be applied to piecework rates. If they fail to do so, the responsibility will of course fall back on the Court.

Mr Walton for the employers submitted that any decision which applied incorporation to hourly workers and not to pieceworkers would be a mistake and with this submission we agree.

To facilitate proceedings for a new award and having in mind the proviso to subsection (1) of section 151 of the statute and the fact that some understanding has been reached between the parties as to date of operation with which the Court cannot be associated, we have decided to amend the term of the award to provide that it shall continue in force only until 30 April 1960.

The Court does not propose to vary the award in any other respect.

Mr Grant is not in agreement and his dissenting opinion follows.

A. TYNDALL, Judge.

DISSENTING OPINION OF MR GRANT

I am of the opinion that the current award should continue in force until 30 June 1960; but following the hearing by the Court of the present dispute on 5, 6, 7, and 8 April 1960, based upon the evidence submitted to the Court that incorporation should be decided upon as from 1 May 1960: incorporation both in time rates of wages and in piecework rates. In my opinion the question of "tallies", "quotas", "agreements" – mutual or imposed – should not, and do not, affect the Court. The essential thing is that both parties were "desirous" of approaching the Court in order that the vexed question of incorporation should be considered and decided upon by the Court. I consider that the evidence justified incorporation in all rates of wages. I quite agree that retrospective payments from 1 May 1960 back to the so-called gentlemen's agreement of 8 February 1960 is a matter for the two parties to decide.