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**NORTHERN INDUSTRIAL DISTRICT BAKERS AND PASTRYCOOKS AND  
THEIR LABOURERS—ORDER JOINING PARTIES TO DISPUTE**

In the Court of Arbitration of New Zealand, Northern Industrial District—In the matter of the Industrial Conciliation and Arbitration Act 1954; and in the matter of the Northern Industrial District Bakers and Pastrycooks and Their Labourers' dispute between the Auckland Master Bakers and Pastrycooks Industrial Union of Employers (applicant) and the New Zealand Baking Trades Employees Industrial Union of Workers (respondent).

FRIDAY, THE 25TH DAY OF AUGUST 1961

WHEREAS the Court has taken into consideration the matter of the abovementioned dispute: And whereas by section 169 of the Industrial Conciliation and Arbitration Act 1954 the Court is empowered at any stage of the proceedings, of its own motion,

to direct that parties be joined: Now therefore, the Court, in pursuance and exercise of the powers vested in it by the said section and of every other power in that behalf thereunto enabling it, doth order that the following employers be and they are hereby joined as parties to the said dispute:

Browns Bakery Ltd., Whakaroa.

Crown Bakery Ltd., 333 Sandringham Road, Auckland.

Hopkins, G. K., Hopkins Bakery, 259 Ponsonby Road, Auckland.

Halsey, F. W., Oxford Bakery, Tirau.

Lumsden, W. H., and Son, Meadowbank Bakery, 2 St. John's Road, Auckland.

Macks, A. J., and Co. Ltd., 10 Station Road, Henderson.

Noyer, J., Warkworth Bakery, Warkworth.

Ohaupo Bakery Ltd., Ohaupo.

Parnwell's Bakeries Ltd., Tauranga.

Pt. Chevalier Bakery (1956) Ltd., 128 Pt. Chevalier Road, Auckland.

[L.S.]

A. TYNDALL, Judge.

#### MEMORANDUM

On 15 and 16 May 1961, a Council of Conciliation inquired into the Northern Industrial District Baking and Pastrycooking dispute, and on 6 July 1961 the Conciliation Commissioner notified the Clerk of Awards, Auckland, that the council was satisfied that a settlement of the dispute would not be arrived at, but that a partial settlement had been reached.

The terms of the partial settlement include the following provisions which were agreed to by the parties:

6. (b) (i) No employer bound by this award shall employ a worker or workers and no worker bound by this award shall act in the making or baking of bread or other fermented goods of any kind for sale whether in the form of loaves, rolls, or any other form between noon on Friday and noon on Sunday.

(ii) Employers who consider it necessary to employ a worker or workers to bake bread on Saturdays associated with holiday periods as provided in subclause 8. (a) and (b) of this award to meet extra demand, may apply for exemption from this clause. Such application shall be lodged with the secretary of the Auckland Master Bakers and Pastrycooks Industrial Union of Employers not later than two months prior to the date for which the exemption is required, and shall be referred to a committee consisting of two representatives of each of the unions parties to this award together with an independent chairman who shall be the Conciliation Commissioner, or, in the event of his being unavailable, a person appointed by the Conciliation Commissioner. The decision of the committee shall be final.

8. (c) No employer shall employ a worker or workers and no worker bound by this award shall act in the making or baking of bread or other fermented goods for sale, whether in the form of loaves, rolls, or any other form, between the hour of 6 p.m. on the day immediately preceding any holiday provided for in this clause and the hour of 6 o'clock in the evening of such holiday: Provided that nothing in this clause shall affect the making of dough and the manufacturing of bread or other fermented goods for the day immediately following the holiday, provided such day following is not itself a holiday.

The Court heard the dispute at Auckland on 7 and 8 August 1961. The only original parties to the dispute are the Auckland Master Bakers and Pastrycooks Industrial Union of Employers (applicant) and the New Zealand Baking Trades Employees Industrial Union of Workers (respondent). The representatives of 10 employers appeared before the Court to object vigorously to the inclusion in the proposed award of clause 6 (b), and supported their objections with evidence.

No objection to clause 8 (c), nor to any other provision in the partial settlement were advanced.

Some employers claimed that they had not been consulted by the union of employers on the matters dealt with in clause 6 (b).

The objections to the inclusion of the provision in the award are based on various grounds, the principal ones being the following:

- (1) The clause will prevent employers making fresh bread available to their clients on Saturdays, and they should not be barred from giving such service to the public.
- (2) It will result in a reduction in the output of bakeries operated by the objecting employers as they have insufficient plant to enable them to bake and wrap adequate quantities of bread to supply the needs of their present customers from Friday until Monday.
- (3) It will render the operation of certain country bakery businesses inefficient and uneconomic.
- (4) The clause is unfair to the employer who concentrates on making bread because it discriminates between the baking of bread and the making of other goods covered by the award.
- (5) One effect of the clause will be to increase the strain on the working staff.
- (6) It will prevent shop keepers catering satisfactorily for the wants of tourists and the travelling public.

During the hearing before the Court and as the result of queries by members of the Court the wording of clause 6 (b) was discussed by the representatives of the applicant and respondent unions. The intentions of the parties were explained, and it was admitted by the representatives that the wording of the clause did not clearly and fully express those intentions, but it was suggested to the Court that it might make the necessary minor verbal adjustments when making the award.

Since the hearing the Court has examined paragraph (ii) of the proposed clause, and has reached the conclusion that it is *ultra vires*, for the reason that the power to grant partial exemption from an award is vested in the Court by section 154 of the Industrial Conciliation and Arbitration Act 1954. In this connection we would draw attention to section 145A of the Industrial Conciliation and Arbitration Act (section 10 Industrial Conciliation and Arbitration Amendment Act 1960) which reads:

Where a settlement, whether total or partial, of an industrial dispute has been arrived at and duly referred to the Court, and the Court proposes to make an award containing a variation of any of the terms of the settlement, the applicants and respondents shall, before the award is made, be entitled to appear before and be heard by the Court on the issue, unless the assessors who signed the memorandum of settlement have on behalf of the applicants and respondents notified to the Registrar of the Court their consent to the variation.

After carefully considering the objections and all the circumstances and with a view more effectually to dispose of the matter according to the substantial merits and equities of the case the Court has decided:

- (1) Of its own motion to make an order under section 169 of the Industrial Conciliation and Arbitration Act 1954 directing that the objecting employers be joined as parties to the dispute:
- (2) To refer the dispute and the terms of partial settlement back to the Council of Conciliation for further consideration by the assessors and for a report pursuant to section 141 of the Industrial Conciliation and Arbitration Act.

Attention is drawn to the provisions of sections 134 and 154 of the statute. In particular it should be noted that any partial settlement of a dispute must be arrived at by *all the parties* to the dispute.

A. TYNDALL, Judge.