

## NELSON CITY COUNCIL GARDENERS AND LABOURERS—AWARD

In the Court of Arbitration of New Zealand, Nelson Industrial District—In the matter of the Industrial Conciliation and Arbitration Act 1954; and in the matter of an industrial dispute between the Wellington, Nelson, Westland, and Marlborough Local Bodies, other Labourers, and Related Trades Industrial Union of Workers (hereinafter called “the union”) and the under-mentioned council (hereinafter called “the employers”):

Nelson City Council, Nelson.

THE Court of Arbitration of New Zealand (hereinafter called “the Court”), having taken into consideration the terms of settlement arrived at in the above-mentioned dispute and forwarded directly to the Court pursuant to the provisions of section 130 of the Industrial Conciliation and Arbitration Act 1954, 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 as hereinafter provided and shall continue in force until the 24th day of April 1964 and thereafter as provided by section 152 of the Industrial Conciliation and Arbitration Act 1954.

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 24th day of October 1962.

[L.S.]

K. G. ARCHER, Judge.

SCHEDULE

*Interpretation*

1. This award shall apply to the Nelson City Council and its undertakings, except such undertakings in respect of which the workers are covered by another award or industrial agreement.

*Hours of Work*

2. (a) Except as otherwise specified, the hours of work shall be 40 per week, eight hours daily between the hours of 7.45 a.m. and 4.45 p.m. on five days of the week from Monday to Friday (both days inclusive).

(b) Notwithstanding anything contained in subclause (a) of this clause, the hours of workers engaged in street sweeping or cleaning of public conveniences shall be from 7 a.m. to 5 p.m. on any day of the week from Monday to Friday inclusive: Provided that not more than eight hours are worked on one day.

(c) All time worked outside or in excess of the hours prescribed herein shall be deemed to be overtime.

(d) When any tidal work is undertaken, the employer may vary the daily starting time of the workers, but so that the eight-hour day or 40-hour week be not exceeded without payment of overtime. Where this subclause is applicable the worker shall receive 3s. per day in addition to the ordinary rate of pay.

Notwithstanding anything hereinbefore provided, shifts may be worked from Monday to Friday inclusive, on any tunnel work as hereinafter defined.

Six hours shall constitute a day's work in tunnel work in any case where the work is required to be done in foul air or excessively wet places.

"Tunnel work" shall be deemed to mean any underground tunnel or excavation that is over 10 ft in length or that requires timbering.

For the purpose of this clause "shift work" shall mean work that is carried on by two or more successive relays or spells of workmen, each relay performing substantially the same duties as the outgoing shift. Work shall not be deemed to be shift work unless shifts are worked on four or more consecutive working days.

Payment for overtime shall not be required under this subclause except in respect of any hours worked beyond eight in any one day (or beyond six when that constitutes a full shift) or 40 in any week (or the equivalent of five shifts) or in respect of any time worked on a Saturday, Sunday, or holidays. Workers employed on any shift of which any part is worked shall be paid 4s. 0½d. per shift in addition to the ordinary rate of pay.

(e) Waterworks caretakers shall be required to work in the ordinary course of their duties upon any day set out by the council's executive officers: Provided that they shall not be required to work more than 40 hours per week without the payment of overtime. Caretakers may leave the reserves for one full day as agreed upon with the council's executive officer, and shall be granted three weeks' annual holiday. They shall be paid at the rate of £13 2s. 6d. per week and shall be provided with a free house.

(f) In consideration of the service performed by the caretaker at the Queen's Gardens on Saturdays, Sundays, and holidays, he shall be granted three weeks' holiday.

The caretaker shall be paid £14 3s. 4d. per week and shall be granted a free house so long as he is required by the council to live in the gardens.

(g) The weekly hours to be worked by the sexton and any assistant sexton shall not exceed 40, to be worked on any day of the week, including Sunday: Provided that the council shall permit Sunday funerals only under exceptional circumstances, and provided, further, that in respect of all work performed by the sexton or any assistant sexton on Saturdays after noon and on any Sunday or holiday, he shall receive extra pay at double the ordinary rate.

(h) Workers employed on maintenance and preparation of recreation grounds shall be paid at the rate of £13 5s. 10d. per week. The hours of such workers shall be 40 per week extending over seven days, Monday to Sunday, inclusive, provided that such workers shall have one clear day of 24 hours off duty in each seven days: Provided, further, that all work done on Sundays and holidays shall be paid for at double the ordinary rate, and work performed after noon on Saturday shall be paid for at double the ordinary rate.

(i) The wages and conditions of the caretaker at Trafalgar Park shall be as mutually arranged between the council and the union.

*Holidays*

3. (a) The following days shall be regarded as holidays and shall be paid for—namely, New Year's Day, 2 January, Anniversary Day, Good Friday, Easter Monday, Labour Day, the birthday of the reigning Sovereign, Christmas Day, Boxing Day, Anzac Day, and any day or part of a day declared by the Mayor for any reason of local or national importance to be a holiday.

(b) Work performed on Sundays or holidays shall be paid for at double ordinary rates: Provided there shall be a minimum payment of two hours at appropriate overtime rates for any work performed on such days.

(c) The provisions of the Public Holidays Act 1955, shall be deemed to be incorporated in this award.

(d) The employer shall pay one-tenth of a day's ordinary wages to each worker in respect of each ordinary day worked by him for that employer during the fortnight ending on the day of any holiday referred to in subclause (a) of this clause: Provided that for the purposes of this subclause workers whose employment is covered by this award shall be deemed to be subject to the provisions of section 28 (2) of the Factories Act 1946, as amended by section 6 of the Factories Amendment Act 1956.

*Wages*

4. The minimum rates of wages to be paid to labourers and all workers covered by this award for work done during working hours shall be:

(a) £13 0s. 10d. per week, whilst engaged on any of the following work, namely:

(i) Construction, maintenance, and repair of street footpaths, preparing and except as hereinafter provided, handling of materials for same.

(ii) Assisting a skilled worker in the construction, repair, or demolition of buildings, bridges, culverts, sewers, drains, fences, walls, or other structures the property of the employer.

(iii) Trenching, ditching, levelling, and grading ground.

(iv) Pick-and-shovel and barrow work.

(v) Labourers on gardens and reserves.

(vi) Street cleaning and sweeping.

(b) The following rates shall be paid to the undermentioned workers:

Workers employed on concrete work shall be paid 2s. 4d. per day extra.  
Workers employed on tunnel work shall be paid 5d. per hour while so employed.

Quarry workers:	Per Week
	£ s. d.
Quarry foremen .....	14 10 10
Pneumatic-drill men .....	13 15 0
Hammer and drill, and assisting foreman to lay and fire charges, and feeding stone-crushers, and all other quarry workers .....	13 5 10

Laying and repairing gas and water mains or services or new piped drains £13 10s. 10d. per week.

(NOTE—This applies to a workman responsible for the proper placing and joining of the pipes and not to workmen employed on excavation or back filling.)

Workers employed in clearing or repairing blocked or defective sewers or foul drains, or when required to come into contact with faecal or sewerage matter or to enter an operating septic tank for purposes other than inspection, or to enter

the sewers, manholes, ejector stations, or other underground works in operation as part of the sewerage system of the city, or to repair same, shall be paid 10½d. per hour additional on their ordinary rate for the time they are so employed.

Collecting and handling house refuse £13 17s. 6d. per week.

Spraying tar or bitumen on power-driven sprayer:		Per Week
		£ s. d.
(i) Man operating the nozzle of sprayer	.....	14 1 8
Man assisting nozzle-man with hose	.....	14 1 8
(ii) Men carrying, boiling, or coming into contact with free tar, bitumen, or asphaltic oils	.....	13 17 6
(iii) Such workers to be supplied with boots, overalls, and cleansing oil, and where required, with gloves.		
(iv) "Free tar or bitumen" shall mean tar or bitumen which is not enclosed in barrels or drums.		
(v) Workers up to a maximum of three operating the "Mix-all" shall be paid 6d. per hour in addition to the usual rates whilst so employed.		

In addition to the wages hereinbefore prescribed, the employer shall provide sound gumboots in case of "wet work" and overalls in all cases of "dirty work".

		Per Week
		£ s. d.
Nurserymen	.....	15 0 0
Qualified gardeners	.....	14 3 4
"Working gangers" or leading hands in charge of three or more other men shall be paid 4s. per day additional on ordinary rates.		
Men sinking shafts or trenches 6 ft or over in depth or working in excavations requiring workers to shovel more than 6 ft in height shall receive 2½d. per hour additional on ordinary rates.		
Cemetery workers other than sexton	.....	13 2 6
Resident sexton-gardener	.....	14 3 4
Assistant sexton-gardener	.....	14 3 4

(c) Employers shall pay the following extra rates to holders of certificates issued under the Royal New Zealand Institute of Horticulture Act 1927:

Junior	.....	7s. 6d. per week.
Intermediate	.....	10s. per week.
Full diploma	.....	15s. per week.

#### *Overtime*

5. (a) All time worked in excess of the daily hours fixed in clause 2 of this award shall count as overtime and shall be paid for at the rate of time and a half for the first three hours and double time thereafter: Provided that all time worked after noon on Saturday shall be paid for at double time rates.

(b) When working overtime, an interval of not less than 30 minutes shall be allowed for a meal at least every four and a half hours.

(c) Overtime shall not be worked except in case of emergency and under instructions from the chief executive officer of that department affected, who shall be the sole judge of what constitutes an emergency. Such instructions may be standing instructions applicable to any particular class of emergency.

(d) For the purpose of computing overtime the hourly rate of wages shall be one-fortieth of the prescribed weekly rate.

(e) When a worker is called back to work after the usual terminating time or before the usual time for commencing work, he shall be paid not less than three hours at the specified overtime rates for each distinct call.

If such call or calls be made on a Saturday, a Sunday or a holiday, the minimum payment shall be three hours at schedule overtime payment.

For the purposes of this subclause a worker shall be deemed to have been called back if four hours' notice or less has been given of the intention to call such a worker back for duty.

Workers who are called out for emergency work shall not be required to perform any work other than in respect of the emergency. The executive officer in charge shall be the sole judge of what is work in connection with the emergency.

(f) Any worker who, after completing 12 hours' work during any day, is required to continue or recommence work without an intervening rest-break of at least nine hours, shall be paid overtime at double ordinary time rate for all time worked until he has had such rest-break: Provided that where the period of work continues into or is recommenced on Saturday, Sunday, Anzac Day, or a holiday, the payment for such continued or recommenced work on such days shall be at treble ordinary time rate; and provided further that, where such rest-break extends into the hours of the worker's normal working day, the employer may defer the starting time of the worker in which case he shall be paid ordinary time rate for the normal working hours not worked by him.

"Day" for the purpose of this clause shall be deemed to be a 24 hour period starting from the time when a worker commences any period of work following a rest-break of not less than nine hours.

(g) Except as provided in subclause (f) of this clause, all time worked between 10 p.m. and 7.30 a.m. shall be paid for at double time rates.

#### *Payment of Wages*

6. (a) Wages shall be paid weekly or fortnightly, at the option of the employer, in the employer's time on a specified day of the week.

(b) One week's notice on either side shall terminate the engagement. Nothing in this subclause shall be held to prevent the summary dismissal of a worker for serious misconduct.

(c) All time workers are kept waiting for wages beyond the ordinary knock-off time on pay day shall be paid for at overtime rates.

(d) With each wages payment there shall be handed into the keeping of the worker a fully itemised statement of the wage makeup.

#### *Tools*

7. All tools shall be supplied by the employer.

#### *General Provisions*

8. (a) Sanitary accommodation shall be provided where necessary, and also shelter sheds for men to take meals and change clothing where this is necessary.

(b) Where necessary, workers employed removing or disposing of household refuse or rubbish shall be supplied with gloves and one pair of boots per annum by the employer.

(c) Where workers' hands come in contact with faecal matter, rubber gloves shall be supplied by the employer.

(d) A pair of rubber gloves shall be made available by the employer for the use of convenience attendants.

(e) Employers shall supply suitable oilskin raincoats and sou'wester hats to surfacemen when they are required to work in wet weather, and to workers required in wet weather to clear sumps, culverts, drains, or water-tables. Workers

using oilskin raincoats and sou'wester hats shall be held responsible for any loss or damage due to wilful destruction or neglect. Before a second or subsequent issue is made the used coats or sou'wester hats shall be returned to the store.

(f) Suitable raincoats and sou'wester hats shall also be supplied to other men engaged on outside work, at the discretion of the engineer or management.

(g) Gumboots shall be provided for all workers engaged in working in sewers or wet places. A wet place shall be deemed to be a place where workers are required to work in water, slush, or wet concrete over 1 in. in depth, or where water, other than rain, is dripping on them. Workers required to wear gumboots under this subclause shall be paid 2½d. per hour extra.

(h) Five minutes at lunchtime and 10 minutes at knock-off time shall be allowed to all tar-workers for cleansing purposes.

(i) A "qualified gardener" is a worker who is competent to or who is engaged to do the work of a nurseryman or a landscape gardener or a plant-propagator. The employer shall supply the union with the name of any worker coming under this qualification within one month after his engagement or after the date of this award.

(j) Where workers are engaged upon work of an unusually dusty or dangerous or dirty or unpleasant nature, the council shall make an additional payment for such. Each case shall be decided on its merits. In cases where no payment is allowed, or the payment allowed by the council is deemed insufficient by any worker the matter shall be dealt with in accordance with clause 17 hereof. This subclause shall not apply to work or workers already provided for in subclause (b) of clause 4.

(k) The caretaker employed at the Roding Waterworks shall be paid a travelling allowance of £1 5s. per week, and the caretaker employed at the Maitai Waterworks shall be paid a travelling allowance of £1 per week.

(l) Overalls shall be supplied to workers engaged in tidal work, sewerage and drainage work, and to any other workers employed in unusually dirty or dusty operations, and to workers employed collecting and disposing of refuse or rubbish.

(m) Any worker coming within the scope of this award who completes or has completed the undermentioned years of continuous service with the council shall be paid each week a service bonus as set out hereunder in addition to any rate prescribed by this award:

	Per Week
	£ s. d.
Exceeding one year but less than two years	8 6
Exceeding two years but less than five years	11 0
Exceeding five years but less than seven years	14 0
Exceeding seven years but less than 10 years	17 0
Exceeding 10 years but less than 12 years	1 0 0
Exceeding 12 years but less than 15 years	1 2 6
Exceeding 15 years	1 5 0

Service with the council prior to the commencement of this award shall count as qualifying service for the purpose of this subclause.

(n) Workers whilst engaged in disinterments or reinterments after one year and within 10 years of the original interment shall be paid £1 12s. 6d. in each case, but in cases where this work is performed within 12 months of the original interment £2 17s. 6d. shall be paid.

#### *Annual Leave*

9. (a) Except as provided hereunder, the provisions of the Annual Holidays Act 1944 shall apply to workers covered by this award.

(b) Men employed on street cleaning, or as refuse loaders, or at refuse tips and the sewer-service man shall be entitled to 15 working days' annual leave on full pay.

(c) The resident sexton shall be entitled to three weeks' annual leave on full pay.

(d) Workers after 10 years of service shall be allowed and paid for an additional five working days' annual leave: Provided that no worker shall receive more than three weeks' annual leave.

(e) Not less than 14 days' clear notice shall be given by the employer to the employee to go on annual holiday leave, and holiday payment shall be made to workers prior to going on leave.

(f) Nothing in this award shall operate in any way to reduce the holiday privileges at present enjoyed by workers covered by this award.

#### *Special Leave*

10. Workers shall not be entitled to payment if absent from work without leave of the chief executive officer of the department affected, and deduction shall be made from wages at ordinary rates accordingly.

#### *Sick Leave*

11. In the case of sickness or accident in respect of which payment is not due under the Workers' Compensation Act, the worker shall be entitled to be paid for five days' sick leave in any year of service. If such payment is not made in any year, the leave may be accumulated to a maximum of 15 days. In such case the worker shall obtain from a doctor a certificate stating the nature of such illness and the probable duration of such worker's incapacity for work, and the cost of the certificate aforesaid shall be borne by the employer.

#### *Accidents*

12. A worker who shall meet with any injury during the course of his employment shall forthwith report to or be conveyed to a doctor for examination and first aid treatment, and obtain from such doctor a certificate stating the nature and extent of such injury and the probable duration, if any, of such worker's incapacity for work; and the cost of such conveyance, treatment, and certificate as aforesaid shall be borne by the employer.

#### *Bicycle Allowance*

13. Workers who are required to use their own bicycle for the purpose of their employment shall receive an allowance of 3s. per week or 9d. per day for same.

#### *Variation of Duties*

14. Workers substantially performing duties provided for in this award, but who in the course of their employment are required to occasionally perform duties provided for in another award or agreement, shall be paid the rate applicable to such duties where such rate is in excess of the worker's usual remuneration. This clause shall not apply to workers substantially employed under the provisions of another award or industrial agreement.

#### *Unqualified Preference*

15. (a) Any adult person engaged or employed in any position or employment subject to this award by any employer bound by this award shall, if he is not already a member of a union of workers bound by this award, become a member of such union within 14 days after his engagement, or after this clause comes into force, as the case may require.

(b) Subject to subclause (a) hereof, every adult person so engaged or employed shall remain a member of a union of workers bound by this award so long as he continues in any position or employment subject to this award.

(c) Every worker obliged under subclause (a) hereof to become a member of a union who fails to become a member, as required by that subclause, after being requested to do so by an officer or authorised representative of the union, and every worker who fails to remain a member of a union in accordance with subclause (b) hereof commits a breach of this award.

(d) Every employer bound by this award commits a breach of this award if he continues to employ any worker to whom subclauses (a) and (b) apply, after having been notified by any officer or authorised representative of the union that the worker has been requested to become a member of the union and has failed to do so, or that the worker having become a member of the union has failed to remain a member.

(e) For the purposes of this clause "adult person" means a person of the age of 18 years or upwards, or a person who for the time being is in receipt of not less than the minimum rate of wages prescribed for adult workers by this award.

(NOTE—Attention is drawn to section 174H of the Industrial Conciliation and Arbitration Act 1954 which gives to workers the right to join the union.)

#### *Under-rate Workers*

16. (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 14 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.

#### *Disputes*

17. The essence of this award being that the work of the employer shall not on any account whatsoever be impeded but shall always proceed as if no dispute had arisen, it is provided that if any dispute or difference shall arise between the parties bound by this award, or any of them, as to any matter whatsoever arising

out of or connected therewith and not dealt with in this award, every such dispute or difference shall be referred to a committee to be composed of two representatives of each side, together with an independent chairman to be mutually agreed upon or, in default of agreement, to be appointed by the Conciliation Commissioner for the district. Either side shall have the right to appeal to the Court against the decision of any such committee upon giving to the other side written notice of such appeal within 14 days after such decision has been made known to the party desirous of appealing.

*Scope of Award*

18. This award shall apply only to the parties named herein.

*Term of Award*

19. This award, in so far as the provisions relating to the rates of wages to be paid are concerned, shall be deemed to have come into force on the 24th day of September 1962, and so far as all other provisions of the award are concerned, it shall come into force on the day of the date hereof; and this award shall continue in force until the 24th day of April 1964.

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 24th day of October 1962.

[L.S.]

K. G. ARCHER, Judge.

MEMORANDUM

The award, which incorporates the terms of settlement arrived at by the parties, includes a clause designed to operate as an unqualified preference provision within the meaning of section 174 of the Industrial Conciliation and Arbitration Act 1954 (as amended by the Industrial Conciliation and Arbitration Amendment Act 1961). Section 174B directs that the Court in making any award shall insert therein an unqualified preference provision only if it is satisfied under the first alternative that such a provision has been agreed upon by all the assessors in the course of an inquiry into an industrial dispute by a Council of Conciliation. For the purposes of section 174B the Court is satisfied to accept the complete settlement arrived at by the parties and executed by or on behalf of all the assessors as proof that the unqualified preference provision has been agreed to by all the assessors, and clause 15 has therefore been incorporated in the award in the form in which it was agreed upon in the Council of Conciliation.

The rates of remuneration prescribed by this award are *not* to be increased by the application of the provisions of the Court's general order of 4 July 1962.

K. G. ARCHER, Judge.