NEW ZEALAND COACH AND MOTOR BODY BUILDERS AWARD—NEW ZEALAND COACH AND MOTOR BODY BUILDING INDUSTRY APPRENTICESHIP ORDER

Inspector of Factories *v.* Midway Motor Painters

IN the Court of Arbitration of New Zealand, Northern Industrial District—In the matter of the Industrial Conciliation and Arbitration Act 1954 and the Apprentices Act 1948; and in the matter of the New Zealand Coach and Motor-Body Builders' Employees Award, dated the 6th day of March 1963, and recorded in 63 Book of Awards, 321, and the New Zealand Coach and Motor-Body Building Industry Apprenticeship Order, dated the 11th day of April 1962, and recorded in 62 Book of Awards, 465; and in the matter of actions between James Brian Thompson, of Auckland, Inspector of Awards, plaintiff, and Theo Subritzky, trading as Midway Motor Painters at McNab Street, Penrose, Auckland, defendant. Hearing: Auckland, 12, 13 and 19 March 1964. Counsel: *C. P. Dolbel* for plaintiff. *J. C. Hendrikse* for defendant.

Apprentice—No Contract—Failure to Pay Tradesmen's Rate—Helper—Overtime

JUDGMENT OF THE COURT DELIVERED BY TYNDALL, J.

THE Court has before it three claims by an Inspector of Awards for penalties in respect of alleged breaches of the Apprentices Act 1948 and of the New Zealand Coach and Motor-Body Builders' Employees Award (63 Book of Awards 321).

The particulars of the alleged breaches are as follows:

Claim M.A. 9/64

That the defendant being a party bound by a Contract of Apprenticeship dated on or about the 10th day of February 1963 between the defendant and J. D. Sunnex whereby by agreement the said worker was employed at the rate of £8 per 40 hour week, did during the pay week ending on the 10th day of April 1963 employ J. D. Sunnex, the said apprentice, on trade work for a period exceeding 40 hours and did fail to pay the said apprentice at the rates prescribed for overtime in clause 5 (a) of the New Zealand Coach and Motor-body Builders' Employees Award dated the 6th day of March 1963 and recorded in 63 Book of Awards 321 as directed so to do by clause 16 (e) of the New Zealand Coach and Motor-body Building Industry Apprenticeship Order dated the 11th day of April 1962 and recorded in 62 Book of Awards 465.

Claim M.A. 10/64

1. That the defendant being a party bound by the provisions of the said award did employ J. D. Sunnex between the 11th day of February 1963 to the 27th day of June 1963 on tradesmans work and did fail to pay him the rates prescribed for tradesmen in clause 4 (a) of the said award.

2. That the defendant being a party bound by the provisions of the said award did on Saturday the 6th day of April 1963 employ J. D. Sunnex on trade work and did fail to pay him for such work the overtime rates prescribed by clause 5 (a) of the said award.

The claims are in the alternative.

The defendant, Theo George Subritzky, conducts a motor vehicle painting business at Penrose, Auckland, under the trade name of Midway Motor Painters. The worker, John David Sunnex, who is named in the statements of claim was engaged by Midway Motor Painters on 11 February 1963 as the result of an advertisement inserted in the daily press seeking a "boy or youth for motor painting shop." At that time the business was owned by a Mr A. R. Sergeant who employed Mr Subritzky as foreman of his workshop. From 13 March 1963 the latter took over the business. Sunnex at the time of his engagement was 16½ years of age. The terms of his employment were arranged between his uncle, Mr C. H. Gatehouse, and Mr D. R. Montgomery, an employee and authorised agent of Mr Sergeant.

Sunnex had previously been employed in a motor painting shop in Taumarunui for three months and he and his parents had been contemplating the possibility of an apprenticeship contract in the industry in Auckland. The rate of wages for an apprentice however was considered to be too low to enable the youth to maintain himself and the idea of an apprenticeship was abandoned.

The evidence from all sources was quite consistent and definite that the youth was not engaged by Midway Motor Painters or employed by Mr Subritzky as an apprentice; consequently the claim M.A. 9/64 must be dismissed.

The terms of the employment arranged between Messrs Gatehouse and Montgomery provided that Sunnex should be paid a weekly wage of £8, and he was paid at this rate from the commencement of his employment by Mr Sergeant on 11 February 1963 until the termination of his employment by Mr Subritzky on 27 June 1963. Mr Gatehouse, in giving evidence, stated that after his discussion with Mr Montgomery he was convinced Sunnex would receive a thorough training in the trade, but he did not think the youth was to be employed as a tradesman. Mr Montgomery stated that when he engaged Sunnex he had no knowledge of what work the youth would have to do in the shop.

Sunnex gave evidence that he performed general duties such as running messages, making tea, procuring lunches and sweeping out the whole of the workshop, and in addition in his own words he said he did the following work:

> I sanded the cars down with sand and sandpaper – I masked up with tape – I painted windows with shield coat and sanded down the putty which had been put in to fill the holes – I usually painted the tyres black and cleaned out the boots of cars and replaced the tools in the boots.

At the relevant times only three persons were engaged in the workshop, Mr Subritzky as owner and employer, a Mr Message, who described himself as a spray hand, and Sunnex. Message stated that the youth's main job was cleaning up the workshop and the other general duties already mentioned. He stated that he himself had worked overtime from 8 a.m. to noon on a number of Saturday mornings and when both he and Sunnex worked on such Saturdays, Sunnex also worked till noon.

Mr Subritzky, the defendant, gave evidence that besides cleaning up the workshop, running messages, making tea, and so forth, Sunnex painted windows of cars with shield coat, cleaned up repainted cars after spray painting, and cleaned out the boots. He stated that the youth did not do rubbing down or masking of chrome with tape. He agreed that his two workers worked on most Saturdays, but that they ceased work at 11 a.m. If they remained in the workshop till noon they would be engaged on their own private work or on work for their friends. He asserted that Message was paid a flat weekly rate as he was permitted by the employer to use the latter's plant and materials to do private work, and this arrangement was treated as a *quid pro quo* in lieu of the payment of overtime.

Clause 1 of the New Zealand Coach and Motor-Body Builders' Employees Award reads:

> This award shall apply to workers (other than those covered by the New Zealand Motor Trade Employees' Award or the Northern, Wellington, and Canterbury Metal Trade Employees' (in Motor Assembly Works) Award) engaged in the manufacture, repair, or maintenance of motor vehicles, horse-drawn vehicles, caravans and trailers, and farm implements, whether such vehicles or implements are made of wood, metal, or composite materials, and shall also apply to springmakers, blacksmiths, welders, vicemen, panelbeaters, painters, including spray painters, machinists, radiator repairers (other than those employed under the provisions of the Tinsmiths and Sheetmetal Workers' Awards), trimmers and trimmers' machinists, undersealers, and assemblers, and those workers engaged as helpers to any of the classifications referred to herein, and to all employers who employ workers on work that is usually performed by any of the classes of workers referred to herein, whether they are employed wholly or part-time only on any of the work covered by this award.

It will be observed that the award covers *inter alia* painters, including spray painters and those workers engaged as helpers to *any* of the classifications referred to in the clause. Painters and spray painters are classifications referred to in the clause, and therefore the award appears to contemplate the engagement of helpers to painters and spray painters.

Clause 4 (a) prescribes the minimum *hourly* rates of wages for various occupations, the only items relevant to the present case being the hourly rate of 7s. 6d. for painters, and the hourly rate of 6s. 6d. for helpers over the age of 21 years.

Clause 4 (b) prescribes the minimum *weekly* wages for junior helpers up to the age of 21 years. The clause goes on to require that thereafter or on attaining the age of 21 years a helper shall be paid not less than the appropriate adult rate according to the class of work he is called upon to perform. This provision is somewhat difficult to comprehend but seems to go beyond the classification of helpers over the age of 21 years appearing in clause 4 (a). Clause 4 (c) being a vital clause is quoted in full:

> Helpers shall not be employed on work which is normally that of a tradesman, but if any dispute arises as to what a helper may or may not do then the question shall be settled under clause 18 of this award.

Clause 4 (d) provides that in other than the smith's shop the proportion of junior helpers shall not exceed one to every six or fraction thereof of assemblers and/or journeymen. It appears that in the motor vehicle painting shop of the defendant clause 4 (d) would allow the employment of one junior helper paid in accordance with clause 4 (b).

Clause 4 (c) prohibits the employment of helpers on work which is normally that of a tradesman. It is alleged in the present case that Sunnex was employed on work which is normally that of a tradesman, namely rubbing down cars, masking them, and removing accessories from them. Evidence was called in support of the allegation from the Auckland district organiser of the New Zealand Engineering, Coachbuilding, Aircraft and Related Trades Industrial Union of Workers who stated in effect that there is no work for a helper in a spray painting shop, and that therefore all work done in such a shop, including preparation work prior to actual painting, is normally that of a tradesman. In view of the provisions of the award to which we have already referred, we cannot accept this proposition which is tantamount to declaring that the employment of a helper in a spray painting shop is completely prohibited, but the award does not say so. Indeed as we have already pointed out the indications are otherwise. Clause 4 (c) nevertheless is very vague, and it is obvious that the parties who framed the clause anticipated that difficulties might arise as to what a helper may or may not do.

We have consulted the International Standard Classification of Occupations issued by the International Labour Office, and the work of a spray painter is defined therein as follows:

> Applies decorative or protective materials, such as paint, enamel or lacquer, on articles of metal, wood or other material, using spraying mechanism: selects and mixes paints to produce desired colour; pours coating material into tank of spraying mechanism; connects sprayer to air hose and adjusts air-pressure valves and nozzle; presses trigger and directs spray over surfaces, applying prime and finish coats; covers with tape areas not to be painted. May prepare surfaces for painting, using scrapers, abrasives, chemical removers, or other means. May be designated according to article coated or material used.

It will be noted that a spray painter *may* prepare surfaces for painting, using scrapers, abrasives, chemical removers or other means. This would indicate that such preparatory work is not necessarily the function of such a tradesman.

After considering the evidence and submissions we are satisfied that the youth was employed as a junior helper and not as a painter. He was engaged at a weekly wage. He did no actual painting work, for which the award prescribes a minimum hourly rate. He seems to have done a small amount of preparatory work which we are not satisfied the award prohibits, and which we think was in the nature of helping the spray painter. If the intention of clause 4 (c) is to restrict severely the work which a helper may do in a motor vehicle paint shop, or indeed to prohibit a helper working at all in such a shop, then such intention should be clearly

and specifically expressed in the award so that each party on whom the award is binding or the workers affected by the award will be aware of what is or what is not to be done.

We find that a breach of clause 4 (a) has not been proved and judgment on the first part of claim M.A. 10/64 is entered in favour of the defendant.

With regard to the remaining claim that the defendant failed to pay Sunnex the overtime rates prescribed by clause 5 (a) of the award, we find that the time and wages book has been kept in such an unsatisfactory manner by the defendant that we place no reliance upon it as a record of actual hours worked by Messrs Message and Sunnex. We accept the oral evidence of these workers, and find that Sunnex was employed on work covered by the award for four hours on Saturday, 6 April 1963, and was not paid the overtime rates prescribed by clause 5 (a). It is also a fair deduction from the evidence that Sunnex did work for the defendant on several other Saturdays for which no overtime payments were made.

A penalty of £10 is imposed on the defendant.

Dated this 13th day of April 1964.

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