

MARLBOROUGH, NELSON, WESTLAND, AND CANTERBURY MALE HAIRDRESSERS' AND TOBACCONISTS' ASSISTANTS—AWARD

[Filed in the Office of the Clerk of Awards, Christchurch]

In the Court of Arbitration of New Zealand, Marlborough, Nelson, Westland, and Canterbury Industrial Districts—In the matter of the Industrial Conciliation and Arbitration Act 1954; and in the matter of an industrial dispute between the New Zealand Federated Shop Assistants Industrial Association of Workers (hereinafter called “the union”) and the undermentioned persons, firms, and companies (hereinafter called “the employers”):

MARLBOROUGH INDUSTRIAL DISTRICT

Ball, T. C. N., Market Place, Blenheim.
Mancer, W. C. D., 29 Market Street, Blenheim.

NELSON INDUSTRIAL DISTRICT

Apra, T., 192 Trafalgar Street, Nelson.
Creighton, R., 142 Bridge Street, Nelson.
Gibbons, R., 179 Hardy Street, Nelson.
Smith, A., 121 Bridge Street, Nelson.
Thomas, D., 256 Trafalgar Street, Nelson.
Wilson, T., 92 Hardy Street, Nelson.

WESTLAND INDUSTRIAL DISTRICT

Buller Hairdressing Saloon, 252 Palmerston Street, Westport.
Henry, R., Mainhard Quay, Greymouth.
Howatt, H. S., Mackay Street, Greymouth.
Nottle, N., Palmerston Street, Westport.

CANTERBURY INDUSTRIAL DISTRICT

Brenton, K. E., 199 Stafford Street, Timaru.
Brown, B. C., 4A Papanui Road, Christchurch.
Colligan, J., 601 Colombo Street, Christchurch.
Crawford, R. H., Tobacconist, 147 Gloucester Street, Christchurch.
Dale, A. H., Ltd., 35 Cathedral Square, Christchurch.
Davidson, J. F., 138 Burnett Street, Ashburton.
Douglas, C. T., 11 North Road, Christchurch.
Edmonds, C., 211 Manchester Street, Christchurch.
Eslicks, Ltd., Tobacconists, 720 Colombo Street, Christchurch.
Finneys Ltd., 5 Cathedral Square, Christchurch.
Hume, C. V., 387 Worcester Street, Christchurch.
Lawson, G. A., 185 Main South Road, Christchurch.
McAuley, D., 124 Worcester Street, Christchurch.
Palmer, M., 59 Seaview Road, Christchurch.
Thomson, Jim, Tobacconist, Kaiapoi.

THE Court of Arbitration of New Zealand (hereinafter called “the Court”), having taken into consideration the matter of the above-mentioned dispute, and having heard the union by its representatives duly appointed, and having also heard such of the employers as were represented either in person or by their representatives duly appointed, and having also heard the witnesses called and examined and cross-examined by and on behalf of the said parties respectively, 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 on the day of the date hereof and shall continue in force until the 7th day of January 1967 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 7th day of July 1965.

[L.S.]

A. P. BLAIR, Judge.

SCHEDULE

Industry to Which Award Applies

1. This award shall apply to the industry of hairdressing and hairworking and the retailing of tobacco and shall relate to those persons, firms, and companies who are engaged in the business of men's hairdressing and the retailing of hairdressing and tobacconists' supplies and the usual commodities purveyed by tobacconists.

Interpretation

2. This award shall also relate to the assistants employed by those employers parties to this award.

Classification

3. (a) A "journeyman" or "journeywoman" shall mean any assistant who has served an apprenticeship of four and a half years in the industry.

(b) A "manager" or "assistant in charge" shall mean an assistant specifically appointed by the employer and employed in the general management of a shop, not being an assistant temporarily in charge during the temporary absence of the employer or manager of a shop.

(c) A "shop assistant" shall mean any assistant who is employed in the retail shop of the employers parties to this award.

(d) A "casual" is a worker engaged to be employed for less than five full days in any one working week, provided that, in the case of shop assistants, an engagement extending beyond a period of two working weeks shall be "part-time" employment and shall be paid for accordingly.

Hours of Work

4. (a) The hours of work shall not exceed 40 per week exclusive of meal intervals, and shall be worked between the hours of 8.30 a.m. and 5.30 p.m. on four days of the week, Monday to Thursday, both days inclusive, and on Friday between the hours of 8.30 a.m. and 8.30 p.m. or 9 a.m. and 9 p.m.: Provided that in the case of saloons which have been exempted from closing on Saturday by orders pursuant to section 10 of the Shops and Offices Act 1955, the ordinary week's work shall not exceed 40 hours to be worked on any five of the six days of the week, Monday to Saturday, both days inclusive, between the hours of 8.30 a.m. and 5.30 p.m. on four days and between the hours of 8.30 a.m. and 9 p.m. on one day. The hours at which work shall cease are subject to the provisions of clause 6 hereof.

(b) The day's work shall be continuous from the hour of starting, save only for intervals for meals.

(c) The clock hours prescribed in subclause (a) of this clause are modified to the extent that any shop assistant may be employed up to 9 o'clock in the evening on the late night last preceding Christmas Day and on one other evening between Christmas Day and New Year's Day.

(d) In the event of a full holiday falling on the Friday the working hours of the previous Thursday shall end not later than 9 p.m.

(e) A statement setting out the hours of work, including starting, finishing, and meal hours of each worker, shall be posted in each saloon.

(f) One hour shall be allowed for a meal between 11.30 a.m. and 2 p.m. on each day of the week, Monday to Friday inclusive, and one hour shall be allowed between 4.30 p.m. and 7 p.m. on the day on which the late night is observed.

(g) Workers shall be allowed to partake of refreshments at convenient times during each morning and afternoon.

Overtime and Meal Money

5. (a) All time worked outside or in excess of the hours of work prescribed in clause 4 of this award shall be paid for at the rate of time and a half for the first three hours and double time thereafter, with a minimum payment of 4s. 6d. per hour.

(b) Overtime shall be calculated on a daily basis.

(c) Notice of overtime shall be given prior to noon on the same day and all assistants called upon to work overtime after 6 p.m. shall be paid 5s. 6d. meal money. Under exceptional circumstances shorter notice may be given, in which case 6s. meal money shall be paid.

Work in Hand

6. (a) Work in hand shall be finished before the workers leave their work.

(b) "Work in hand" shall be deemed to mean work in the chair at 10 minutes before the hour for ceasing work as fixed in clause 4 hereof and shall be limited to one operation.

Wages

7. (a) The minimum rate of wages for journeymen and journeywomen shall be £16 per week.

(b) Assistants employed as shop assistants shall be paid not less than the following rates of wages:

	Males			Females		
	Per Week			Per Week		
	£	s.	d.	£	s.	d.
Under 16 years of age	5	10	0	4	10	0
16 to 16½ years of age	5	17	6	5	0	0
16½ to 17 years of age	6	10	0	5	10	0
17 to 17½ years of age	7	12	6	6	2	6
17½ to 18 years of age	8	12	6	6	10	0
18 to 19 years of age	10	2	6	7	2	6
19 to 20 years of age	11	12	6	8	0	0
20 to 21 years of age	13	3	0	9	6	0
21 years of age and over	15	10	0	10	10	0

(c) A manager or assistant in charge in accordance with the provisions of subclause (b) of clause 3 shall receive the following minimum rate of remuneration:

Male, £16 10s. per week.

Female, £11 10s. per week.

Casuals and Part-time Assistants

8. (a) Casuals may be employed and shall be paid 9s. per hour with a minimum payment of £1 7s.

(b) Part-time shop assistants may be employed for not more than 25 hours in any working week and shall be paid *pro rata* the appropriate rate prescribed in subclause (b) of clause 7 of this award plus 10 per cent.

Weekly Employment

9. Except in the case of casuals, the employment shall be deemed to be a weekly one, and no deduction shall be made from the weekly wages except for time lost through the worker's own sickness, default, or accident, or for any cause outside the control of the employer.

Holidays

10. (a) The following days shall be allowed as holidays without deduction from wages: New Year's Day, 2 January, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Labour Day, the birthday of the reigning Sovereign, Christmas Day, Boxing Day, and Anniversary Day.

Should any of the holidays specified herein not be generally observed in any locality another day may be substituted therefor by agreement with the local union.

(b) Should any of the above holidays, other than Anzac Day or Easter Saturday, fall upon a Saturday or a Sunday, then for the purpose of this award such holiday shall be observed on the following Monday. Should the said Monday be a holiday under this award, then such holiday shall be observed on the following Tuesday.

(c) (i) Except where otherwise provided, any work done on Saturday or Sunday or on any of the above-mentioned holidays observed in lieu thereof shall be paid for at double rates. The said payments shall be in addition to the ordinary weekly wage.

(ii) Any work done on Saturday as part of the ordinary week's work pursuant to the proviso of subclause (a) of clause 4 of this award shall be paid for at one half the ordinary time rate in addition to the ordinary weekly wage, provided that any work done on Saturday which is in excess of the weekly limit of 40 hours shall be paid for at double rates.

Annual Holidays

11. (a) An annual holiday shall be allowed in accordance with the Annual Holidays Act 1944 and its amendments.

(b) The annual holiday to be allowed to assistants upon completion of the tenth and subsequent years of continuous service with the same employer shall be three weeks instead of two weeks as provided by subclause (a) of this clause. A worker not completing a year of service under the foregoing provisions shall be granted proportionate payment in accordance with the length of service for that year. For the purpose of this provision, continuity of service with the same employer shall not be deemed to be broken by reason of the sale or transfer of a business to a new employer who continues to employ such workers.

Uniforms

12. Where white or special uniforms are worn they shall be provided by and laundered at the expense of the employer.

Tool Allowance

13. (a) The employer shall provide all tools of trade including electric hair cutting machines in saloons where they are in use.

(b) The employer may, in lieu of the foregoing requirement in subclause (a) of this clause, supply electric hair cutting machines only and make a payment of 2s. per week to each journeyman for supplying his own tools of trade.

General Conditions

14. (a) On each employer's premises a space shall be set apart for the workers to hang their clothing, such places, as far as practicable, to ensure a reasonable degree of safety.

(b) Each employer shall upon written request supply to the secretary of the union, but not more often than once every three months, a list of names of the assistants employed by him under this award, and in the case of assistants under the age of 18 years the age of each such assistant shall also be supplied.

Payment of Wages

15. (a) All wages and overtime shall be paid weekly during working hours and in cash not later than Wednesday in each week. Should a holiday fall on a regular pay day wages shall be paid for that week on the working day preceding the holiday.

(b) Assistants shall be supplied on request with a statement setting out the computation of the wages being paid together with any deductions made therefrom whenever there is an alteration in their normal weekly earnings.

(c) Any worker who, at the date of the coming into force of this award, is in receipt of wages in excess of those prescribed by this award shall not have such wages reduced by reason of the coming into operation of this award.

Time and Wages Book

16. (a) The occupier of a shop in which one or more assistants are employed shall at all times keep in the prescribed form, or in such other form as may be approved by the Inspector of Awards, a record in English (called the "Time and Wages Book") showing in the case of each assistant:

- (i) The name of the assistant, together with his age if under 21 years of age.
- (ii) The kind of work on which he is usually employed.
- (iii) The hours during which he has actually been employed on each day, showing the starting and finishing times each day.
- (iv) Wages paid on each pay day, and the date thereof.
- (v) Such other particulars as are prescribed by regulations.

(b) The entry of the particulars hereinbefore referred to, or a memorandum in writing containing those particulars, shall be signed by the assistant at the time of payment of his wages, and that signature shall operate as a receipt for the payment.

(c) The wages and time book in use for the time being and any such book used within the preceding five years shall at all times be open to inspection by an Inspector of Awards.

(d) Every assistant who fails to sign the record, or who wilfully signs an incorrect record, shall be liable on summary conviction to a fine not exceeding £5.

(e) An Inspector of Awards may at any time require the occupier to verify the entries in the time and wages book, in such forms as may be prescribed.

References

17. (a) Each worker on leaving or being discharged from his or her employment shall, on request, be given within 24 hours thereafter, a reference in writing stating the position held and the length of service.

(b) Original references shall be the property of the applicant and shall be returned within 48 hours after engagement or rejection of the application.

Right of Entry

18. The secretary or other authorised representative of the union of workers shall, with the consent of the employer (which consent shall not be unreasonably withheld), be entitled to enter during working hours upon the premises or works and there interview any workers, or collect union dues, but not so as to interfere unreasonably with the employer's business.

Disputes

19. Any dispute in connection with any matter not provided for in this award shall be settled between the particular employer concerned and the secretary or president of the union, and in default of any agreement being arrived at, then such dispute shall be referred to the local Conciliation Commissioner, who may either decide the same or refer the matter to the Court. Either party, if dissatisfied with the decision of the Commissioner, may appeal to the Court upon giving written notice of such appeal to the other party within 14 days after such decision shall have been communicated to the party desiring to appeal.

Unqualified Preference

20. (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

21. (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.

Opening and Closing of Hairdressing Saloons

22. (a) In exercise of the powers vested in the Court by the Shops and Offices Act 1955, it is ordered that all hairdressing saloons in which is carried on any class of business to which this award relates shall be opened on five working days of the week at an hour being not earlier than 7 a.m. and shall be closed on four working days of the week at 5.45 p.m. and on one working day of the week at 9 p.m., provided that on Christmas Eve and New Year's Eve the closing hour shall be 10 p.m. The said hairdressing saloons shall not be open for business on Saturdays.

(b) All the said hairdressing saloons shall be closed for the whole of each of the days prescribed by this award as whole holidays (including days lawfully observed as holidays in lieu of any prescribed).

(c) This clause shall not apply to tobacconists' shops.

(d) Notwithstanding anything to the contrary in this award, when 24 December and 31 December fall on a Monday or on a Tuesday the late closing days for the weeks in which those dates occur may be observed on those dates instead of on the ordinary late closing days in those weeks as the occupiers in any locality may determine: Provided that on any dates to which these provisions relate, saloons may remain open until 10 p.m. if either or both of the late closing days are observed on those dates.

Application of Award

23. This award shall apply to the original parties named herein, and shall extend to and bind as subsequent party hereto every industrial union, industrial association, or employer who, not being an original party hereto, is, when this award comes into force or at any time whilst this award is in force, connected with or engaged in the industry to which this award applies within the industrial districts to which this award relates.

Scope of Award

24. This award shall operate throughout the Marlborough, Nelson, Westland, and Canterbury Industrial Districts.

Term of Award

25. This award shall come into force on the day of the date hereof and shall continue in force until the 7th day of January 1967.

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 7th day of July 1965.

[L.S.]

A. P. BLAIR, Judge.

MEMORANDUM

The matters referred to and settled by the Court were as follows: Classification (clause 3 (d)); counter-proposal for modified hours of work, a corollary to the opening and closing hours proposal; wages (clause 7 (a)); casual and part-time assistants (clause 8); and a counter-proposal concerning the observance of late nights under the opening and closing hours provisions (clause 22).

The subclause as proposed by the respondent employers for inclusion in clause 22 was in the following form:

“(e) Notwithstanding anything to the contrary herein contained, it shall be competent for the executive committee of the local union, on the application of the occupiers of the hairdressers’ saloons in any locality, to agree that such occupiers may transfer the late night normally observed between Christmas and 3 January to any working day during the period of three weeks prior to 1 January, provided, however, that no two late nights may be observed with less than two other nights between them. Should there not be agreement to such application within three months of it being made either party may refer the matter to a disputes committee set up under clause 19 hereof for determination.”

No agreement on this proposal could be reached by the Conciliation Council and a question of interpretation has arisen. The subclause must be read in its context as part of clause 22 and in the light of the award as a whole and the Shops and Offices Act 1955. The agreed part of clause 22 provides for hairdressing saloons to be normally closed on four working days of the week at 5.45 p.m. and on one working day of the week at 9 p.m. Some slight variations of this provision follow which are agreed to and with which we are not concerned. Then would follow the disputed subclause (e). This subclause purports to provide an opportunity once a year to transfer a late night. The effect of this provision, if put into operation, is that there would be two late nights in one week once a year. Mr Velvin has submitted that two late nights in one week would be contrary to the Shops and Offices Act.

The Act certainly seems to envisage only one late closing day in a week. “Late closing day” is defined in section 2 as “the working day (if any) in any week for which a later hour of closing is fixed for that shop by any award than for any other working day in the week”. Then in subsection 5 of section 3 (the section dealing with opening and closing hours) it is provided that “where by any award a late closing day is fixed for any shop in any week then, unless provision is made in the award to the contrary, that day shall be the last working day in that week that is not an early closing day”. Both these provisions in the Act appear to contemplate only one late closing day in a week. (In the latter subsection the words “unless

provision is made in the award to the contrary” do not provide an escape route from such a meaning as the qualification relates to “the last working day in the week”. In other words the qualification merely permits *the last working day* to be other than the last full working day of a week if the award so provides—it does not permit two late working days in a week.)

It is true that the Acts Interpretation Act 1924 provides that words importing the singular number include the plural number but only “if not inconsistent with the context thereof”. In the present case our opinion is that one cannot import the plural sense into the sections cited without distorting the meaning which the legislature has conveyed. For example if Parliament had intended the definition of “late closing day” to have been capable of having a plural significance it would have defined it as “a working day in any week etc. . . .” rather than “*the* working day, etc. . . .”

Accordingly we must hold that the Act has, if not expressly then by implication, prohibited two late closing days in any one week. We have not overlooked that section 3 gives the Court wide powers in fixing the opening and closing hours of shops. However it is well established law that a particular intention in a statute must be construed strictly as against a general provision. There is indeed no difficulty in the present case in harmonising the late closing provisions with the comprehensive power of the Court under section 3. So far as the present case is concerned the proposed subclause 22 (e) cannot be regarded as an application to the Court to exercise its powers under section 3 (1). The subclause must be construed in its context and in that context it is contrary to the Shops and Offices Act and must be refused on that ground.

Upon being satisfied by supporting documentary evidence that an unqualified preference provision has been agreed to by all the assessors in accordance with section 174B of the Industrial Conciliation and Arbitration Act 1954 (as enacted by the Industrial Conciliation and Arbitration Amendment Act 1961), the Court has inserted clause 20 in the award in the form in which it was agreed upon in the Council of Conciliation.

A. P. BLAIR, Judge.