

bakery are manufactured bread and pastry, whilst in the shop are sold pastry, confectionery, groceries, vegetables and other products, not including bread, which was only sold from the bakery and defendant's cart, which plied within the Borough of Waipawa, and was driven by the defendant employee who on and prior to the 30th June, 1909, the weekly half-holiday for the borough, was working in the bakery and driving the defendant employer's cart without wage, with a view of learning the business of baker and pastrycook and confectioner, and also with the further view of eventually acquiring the latter's interest in the shop, bakery and bread-run. He did acquire this interest on the 1st July, 1909, the day immediately succeeding the date of the alleged breaches of the Shops and Offices Act, the Factories Act, and the Industrial Conciliation and Arbitration Act. The defendant employee was on the 30th June, 1909, delivering bread for his employer from the latter's cart, more than half an hour after 1 o'clock of the afternoon of that day, at a place within the borough, and distant less than one mile from the defendant's shop and bakery. He had not either on or prior to the 30th June worked in the shop, wherein no bread was ever kept. The reason of the late delivery of the bread on the 30th June was that the defendant, owing to ill health, had not risen at his accustomed hour. This fact is not material except in so far as the penalty is concerned. The employee is a brother-in-law of defendant, and had come out from England for the express purpose of taking over the latter's business. It is admitted that no time or wages book was kept by the employer, that no notice was posted as required by the Factories Act, and that the other defendant was not in the Dominion when the award was made. This latter fact is not material except as to the penalty.

It will be convenient at this stage to take each case separately.

(a.) Failing to keep a time and wages book. Section 58 of the Industrial Conciliation and Arbitration Amendment Act, 1908, is the provision governing this offence, and it provides that "a wages and overtime book shall be kept by every employer bound by an award or industrial agreement, and every such employer who fails to keep such a book, or wilfully makes any false entry therein, is liable to a penalty not exceeding fifty pounds."

Now, the term "employer" by interpretation involves the idea of having one or more workers, as defined, in his employ (see subsection (1) of section 2 of the principal Act), whilst "worker" means any person of any age or either sex employed by "any employer to do any skilled or unskilled manual or clerical work for hire or reward." Assuming that it is necessary to decide whether the employee is a worker for hire or reward, I think that he was. There was an agreement between the employer and the employee, whereby the latter was to purchase the former's interest in the business, and one of the terms of that agreement was that the employer was to teach the employee the business. The term "reward" is not confined to the payment of wages or what is termed in law "consideration," it consists of any *quid pro quo* passing from the employer to the worker. In the present case, in return for the employee's services, the employer was to teach him the trades before mentioned. In my opinion a conviction should be recorded. The employer is accordingly convicted, and fined £1.

(b.) Employing a shop-assistant after 1 o'clock on the afternoon of the borough half-holiday.

Sections 3, 6, and 11, as modified by sections 18 and 21, of the Shops and Offices Act, 1908, are the sections creating the offence. The fact relied on by the prosecution is the selling by the employee of bread from the employer's cart more than half an hour after the time fixed for closing on the afternoon of the borough half-holiday. We need not consider separately the shop and the bakery, for, although conducted in separate buildings, and it was not the custom to sell bread otherwise than from the bakery and the cart, both the bakery and the shop are run as one business. It could not, therefore, be reasonably said that the cart was the auxiliary of the bakery and not of the shop. The correct way of putting the case is to find that the cart was an auxiliary of the business. That included both the shop and the bakery. It would be idle for the defendant to contend that if when delivering bread he had been given an order for goods ordinarily sold in the shop he would not have accepted it. Paragraph (c) of section 7, and section 20, therefore govern the present case. Moreover, it was neither proved nor admitted that the employee had been given the half-holiday mentioned in the proviso to paragraph (a), (1), of section 18. The right to keep open a shop does not involve denial of a weekly half-holiday on some day of the week to all the shop-assistants working therein. Was, then, the employee a shop-assistant? I think that he was. A shop-assistant is a person employed in a shop—that is, engaged in working therein. The definition is studiously silent as to working for hire or reward. In my opinion a conviction should be recorded. Defendant is accordingly convicted, and fined £2, and ordered to pay the costs.

(c.) Failing to exhibit at or near the entrance the notice required by section 17 of the Factories Act, 1908.

The observance of the provisions of this section is a duty cast on all occupiers of bakehouses, which, within the meaning of the Factories Act, are factories irrespective of the number of persons employed therein; and the defendant, who worked in the bakehouse, counts as a person so employed (see section 65, and 25 N.Z. L.R. 258). The defendant employer is convicted, and fined £1, and ordered to pay the costs.

(d) and (e). (1.) Employing a baker, and paying less than the minimum wage. (2.) Failing to claim the minimum wage.

In both these cases the one defendant is clearly an employer, whilst the other is a baker in the employ of the former. It is not necessary to decide whether that baker is a worker within the meaning of the Arbitration Act. The employment of a baker and not paying him the wages prescribed by the award is a breach of one of its provisions irrespective of the question whether the baker is a worker within the meaning of the Arbitration Act. Section 71 of the Amendment Act would seem to suggest the inference that this is the correct construction of the award.

Judgment will be recorded for the plaintiff for £2 against the defendant employer, and for £1 against the defendant employee.