

awards. The position was made even clearer in the 1911 amendment to the Arbitration Act—section 10. That amendment prohibited the Court from putting provisions in any award inconsistent with the statute. All these amendments were made by Parliament because the Court was making awards which in effect deprived the workers of the benefits of the Legislature. It was a case of move and counter-move. We appeal to this Committee to make the position clear and to strike out section 31 altogether. There may be some doubt in the mind of some member of the Committee as to the truth of my statement that the Court has used its power to checkmate the Legislature. So as to make the case quite clear I wish to recount the history of one case here in Wellington. We were before the Court for the first time after the re-formation of our union in November, 1908. For a year preceding that date we were working under a recommendation of the Conciliation Board which gave us a half-holiday for three weeks and a full Sunday on every fourth week. Before our case was heard the 1908 Amendment Act to the Shops and Offices Act was before the House. That amendment gave us the half-holiday. The Court's award in our case, heard before the passing of the Act and made after the Act was passed, took away from us the full Sunday in four, gave no holidays, and stated that the Court would not deal with holidays as the Legislature had dealt with them. The award then made also contained a provision that in the event of any alteration of conditions by the Legislature the award could be varied by the Court. In 1909 Mr. Millar introduced a Bill fixing our hours at sixty and fifty-six. In 1910 we were before the Court again. Despite the putting-in of Mr. Millar's Bill as evidence, wherein was shown the Cabinet's intention to reduce our hours of work, the Court reimposed the sixty-five hours' weekly work for men and women. It did more: it inserted a clause which said that if Parliament altered the sixty-five hours or any single unimportant matter covered by the award the whole award would lapse. This was done because the Court knew of section 74 and also of Mr. Millar's intention to reintroduce his Bill covering our hours of work. Our 1910 award expired in August, 1912, and since then we have been forced to carry on without an award. Clause 14 of the expired award was an attempt, and a successful attempt, "to circumvent the operation of a statutory provision." The words are not mine, but those of our legal adviser, Sir John Findlay. I stated a case for his opinion as follows, and I also put in Sir John's full answer:—

WELLINGTON DISTRICT HOTEL, CLUB, AND RESTAURANT WORKERS' UNION INDUSTRIAL UNION OF WORKERS.

To Sir John Findlay, K.C.

Registered Office, Trades Hall,

Wellington, 17th September, 1912.

SIR,—

Questions have arisen as to the continuance of our award above referred to. The following matters have led up to the creation of those questions:—

The Conciliation and Arbitration Act (principal Act) provides—section (d)—

"The currency of the award, being any specified period not exceeding three years from the date of the award: Provided that, notwithstanding the expiration of the currency of the award, the award shall continue in force until a new award has been duly made, or an industrial agreement entered into, except where, pursuant to the provisions of section twenty-one or twenty-two hereof, the registration of an industrial union of workers bound by such award has been cancelled."

This section remains as originally enacted, and shows clearly, we think, the intention of the Legislature—viz., that awards of the Court run on for ever unless superceded by a fresh award or agreement, or destroyed by reason of the cancellation of the union. Section 74 of the amended Act, 1908, reads,—

"The provisions of an award or industrial agreement shall continue in force until the expiration of the period for which it was made, notwithstanding that before such expiration any provision inconsistent with the award or industrial agreement is made by any Act passed after the commencement of this Act, unless in that Act the contrary is expressly provided. On the expiration of the said period the award or industrial agreement shall, during its further subsistence, be deemed to be modified in accordance with the law then in force."

This section was framed designedly. It indicates clearly that Parliament anticipated the passing of enactments containing provisions inconsistent with extant award provisions. Indeed, it was framed for the purpose of prohibiting award conditions in excess of statute stipulations. In practice it was found that the section did not prevent the Court awarding conditions in excess of statute conditions, where the statute exceeded was passed prior to the enactment of the section. But as framed the section (74) is meant to further extend section 90 (d) of the main Act. It provides for the continuance of the award, modified in accordance with the statute requirements.

There have been two Arbitration Court test cases on the point—*Le Cren v. Wairarapa Farmers' Co-operative Society*, and one other case. Both cases went to show that the section (74) was effective, as intended. The section quoted was enacted in 1908. On the 15th July, 1910, the Court of Arbitration made an award in answer to our application (*Book of Awards*, Vol. xi, p. 325). In that award, for the first time in any Arbitration Court judgment, there was inserted a clause "Alteration by Legislation." It reads,—

Clause 14. "Alteration of Award by Legislation.—14. The provisions of this award shall continue in force until any change is made by legislation in any of the conditions fixed by this award. On any such change being made, all the foregoing provisions of this award shall cease to operate, and thereafter during the term of this award the following provisions shall be in force: Subject to any legislative provisions on the subjects, the hours of work, wages, and other conditions of work of all workers coming within the scope of this award shall be fixed by agreement between each employer and the individual workers employed by him."

This clause was enacted by His Honour the President of the Court, we hold, because of section 74 of the amended Act, and mainly because of our efforts to secure legislative as well as Arbitration Court redress. The award prescribes—clause 4, "Hours of Labour":—

"Hours of Work.—4. (a.) A week's work for all classes of hotel workers covered by this award shall not exceed sixty-five hours."

On the 3rd December, 1910, roughly four months after the making of our award, the Shops and Offices Amendment Act, 1910, was passed. The general sense of that measure is to provide a working-week of sixty-two hours for male workers and fifty-eight for women workers in hotels. Section 11 of that Act exempts hotel workers from the hours provisions where award regulations are in existence, but only during the period for which the then current awards were made. This section was purposely inserted so as to counteract clause 14 of the award, with the thought that if the award and its provisions could be maintained inviolate for the term for which it was made, then section 74 of the amended Conciliation and Arbitration Act would ensure its (the award's) continuance, modified by statute, thereafter in keeping with section 90 (d) of the main Act.

The 2nd August, 1912, came, and with it the date of expiry of the term for which our award was made. As outlined above, the case for the continuance of our award, notwithstanding clause 14 thereof, was submitted to the Labour Department. Unofficially we are informed that the Department has been advised by the Solicitor-General that clause 14 of the award has the effect of wiping out the award provisions and leaving the union with an award which is not an award for any practicable purpose.