To further gauge the position an interpretation of clause 14 of our award was sought from the Court itself. The Court has filed the following answer, dated 16th September, 1912 :—

"The effect of the Shops and Offices Act, 1910, was to alter the hours of work fixed by the award. So far, however, as related to hotels and restaurants governed by any award then in force, section 11 suspended the operation of the Act until the expiration of the period for which such award was made. On the expiration of that period the alteration in hours took effect; then clause 14 of the award came into operation, and the other provisions ceased to operate. The position, therefore, is that, subject to legislative provisions on the subject, the hours of work, wages, and other conditions of work of the workers coming within the scope of the award have to be fixed by agreement between each employer and the individual workers employed by him."

We take this answer to mean the Court of Arbitration holds that we have now an award the single provision of which is the second paragraph only of clause 14 of our interfered-with and apparently riddled award. Paragraph (*b*) of clause 14 (the single provision of the award) grants to workers under the award not one solitary working restriction other than would otherwise obtain in the trade were there no industrial union, no Court of Arbitration, or no award in existence. It grants to hotel workers in Wellington organized in an industrial union, loyal to the Act and Court, no more protection, no more regulation, no better or varied conditions of labour than obtains in hotels on the west coast where there is no industrial union of botel workers in existence.

Has the Court acted within the ambit of its jurisdiction? Section 20 of the main Act gives the Court wonderful powers *re* dealing with industrial matters, but is not the insertion of clause 14 in the award, and the interpretation put on it by the Court, a violation of the scheme and spirit of the Arbitration Act, as set out in sections 90 (*d*) and 74 quoted above? Has not the Court exceeded its statutory powers? Is this second part of clause 14 an award within the meaning of the Act; or, even if the Court later on holds that in addition to clause 14 the statute provisions, the hours, and holidays are now incorporated in the award in substitution of the former hours-of-labour clause of the award, would that strengthen the judgment as an award within the Act? If a union applied to the Court of Arbitration for an award in regulation of labour conditions in its trade and the Court gave judgment as follows, together with list of parties and term of award, this single provision—"Subject to any legislative provision on the subject, 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"—would that be an award? Finally, has the Court overridden sections 90 (*d*) and 74 of the Conciliation and Arbitration Act?

On these matters we ask your opinion and advice.

Yours respectfully, for the union,
E. J. CAREY, Secretary.

OPINION: WELLINGTON COOKS' AND WAITERS' AWARD.

Clause 14 of the award made on the 15th day of July, 1910, is the second-last clause of the award. The whole of the operative part of the award determining hours of work, wages, and other conditions of work is contained in the thirteen preceding clauses.

The currency of the award is fixed by the last clause (15). Clause 14 was therefore not necessary for the purpose of declaring the currency of the award. Its provisions—when they came into operation by the happening of the condition mentioned therein—cannot be said to fix the hours, wages, or conditions of labour at all, for it relegates all matters commonly dealt with by the Court to private contract.

Now, this condition is a provision that "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." And upon the happening of this condition, the clause goes on to provide that all the *foregoing* provisions of the award (that is, all the operative provisions except 15, the currency clause) shall cease to operate, and that thereafter during the term of the award the following provisions shall be in force: "Subject to any legislative provisions on the subject, 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."

Now, I think it is clear that the effect of this clause (assuming it to be valid at all) is, upon the happening of the condition, to destroy the award; for an award which declares that the hours of work, wages, and other conditions of work shall be fixed by agreement between each employer and the individual workers employed by him is no award: it is the negation of the purposes of an award. If, therefore, clause 14 has any legal effect at all, it is to qualify clause 15, determining the currency of the award, and to make the continuance of the award conditional upon another contingency—viz., that expressed by clause 14.

Upon this assumption, then, the position would be that, immediately a change were made to take effect by the Legislature in any of the conditions of the award, the award would *ipso facto* determine, and the parties be at liberty to proceed for a new award.

Under this head the question arises, Has any change been made by legislation in any of the conditions fixed by the award? It may be admitted that the Shops and Offices Act Amendment Act, 1910, does this, but the effect of section 11 of that Act must be considered. It provides that "Notwithstanding anything in this Act, any award of the Court of Arbitration relating to hotels or restaurants in force on the passing of this Act shall continue in force for the period for which it was made as if this Act had not been passed." The words "the period for which it was made" may, by virtue of the provisions of section 90 (*d*) of the Industrial Conciliation and Arbitration Act, 1908 (Consolidation) mean either (*a*) the period specified in an award, (*b*) the period specified plus the period until a new award has been entered into. The expression is the same as that contained in subsection (1) of section 74 of the Industrial Conciliation and Arbitration Act, 1908.

I am of opinion that the intention of the Legislature was that the legislative provisions should supersede those of the award immediately upon the expiry of the specified period; and the effect of the Shops and Offices Amendment Act, 1910, in conjunction with the said proviso to section 90 (*d*) of the Consolidation Act, is this: that the legislative provisions took effect on the 2nd day of August, 1912 (that is, the day after the expiry of the specified period of the award—namely, the 1st day of August, 1912). But by virtue of section 90 (*d*) the award continued in force after that expiry, and therefore there was a change made by legislation in the conditions of the award of that date. Still, assuming the validity of clause 14, the effect therefore would be to determine the award *in toto* as from the 2nd day of August, 1912, and consequently to negative the effect of section 90 (*d*). In my opinion, therefore, if the clause is valid it puts an end to the award on the 2nd day of August, 1912.

The further more important and difficult question remains: Is clause 14 a valid provision?

The matters which an award is to provide for are specified by section 90 of the consolidated Act, and the object and effect of clause 14 being to put an end to the award it may be said to be a provision relating to the currency of the award. Without doubt clause 15 specifically provides for the currency of the award; and if it was intended to qualify this in an ordinary way, the qualifying proviso would have followed clause 15. It may, however, be put this way: that the duration of the award is to be two years, plus the period intervening before a new award is made, unless during this period legislative amendments are made, in which case the award shall remain in force only till the change is made by Legislature. That is the effect of the clause. It is straining language to attempt to say that the award remains in force after this.

The Court has a discretion to make or refuse an award (*vide* the Agricultural and Pastoral Workers' case). But if clause 14 is not to have the effect I have stated then the Court has a third course—namely, to bind the parties down to abide by conditions of private contract for a *specified period*, and so prevent them from renewing their application for an award for three years, and so on *ad infinitum*. I do not think the Court has any such power; it would stultify the Act, and be as absurd as to say that a Court of law could decline to decide between parties and declare that its determination of the suit shall be such agreement as the parties shall come to. Clearly the Court of Arbitration cannot