

47. *Mr. Grenfell.*] Now, as to the results of your going to the Arbitration Court?—I said this: that the fact of our going to the Arbitration Court and getting the award made for some of our workers a longer week by thirteen hours—

48. What Act was in operation at that time?—I repeat it again, word for word: that the fact of our going to the Arbitration Court meant this—that a section of our workers were awarded thirteen hours a week longer than a corresponding section of workers working, say, in Westport. A waiter in a restaurant was required by the Act to work fifty-two hours a week; the Conciliation Board fixed sixty-five hours as against fifty-two in the Act. The action of the Conciliation Board was considered to be wrong, and its recommendation was invalidated because of its fixing hours in excess of the Act; but what was wrong for the Board to do was legal for the Court to do, and the Court, after declaring the Board's determination invalid because of its fixing sixty-five hours per week, itself reimposed the sixty-five hours. The Legislature never intended that the Court should award more hours, but the legal mind saw this loophole and, instead of awarding less, awarded more.

49. On what do you base your statement that the Legislature never intended the Court to award more hours than were fixed by statute?—*Hansard.*

50. Can you mention some of the speakers?—No, I cannot.

51. With respect to your present award and the provision of the Court regarding alteration in the conditions by legislation, is this not the position from the standpoint of the Court: that the Court was established to fix the hours and working-conditions of the worker, also to fix the rates of wages. Is it not reasonable for a Court of equity to say that if the basis upon which an award is made is altered by legislation, that award should be broken down, and that the Court having decided that certain rates of wages based upon the working-hours should be paid, reasons the matter out and decides that if the basis of this award is disturbed as to the working-hours it is reasonable that the whole award should go to the wall, and the legislation should not reduce the hours of work without reducing the rate of wages? I put it to you, Mr. Carey, is it not reasonable that the whole award should be wiped out? If the Court bases the rates of wages upon the hours that were fixed by statute and that basis is destroyed, is it not reasonable and equitable that the whole matter shall be set aside and it be open to the parties to appeal to the Court again by a revision of the working-conditions?—The Court says this: that if Parliament alters a law now in operation, then, though the conditions in that law are not in any way contained in any provision of the award, the award, though silent on all the conditions of that law, shall cease to operate. I will read the clause (Book of Awards, Vol. xii, page 525, clause 14):—“Alteration of award by legislation: 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 or by statute. 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 subject, the hours of work, wages, and other conditions of work of all workers acting within the scope of this award shall be fixed by agreement between each employer and the individual workers employed by him.” This is what that may mean: The Act says there shall be not longer than five hours between a meal—that is the statute. The employers or anybody might come along and ask that there be five hours and a half or four hours and a half. We would lose all the benefits of the Arbitration Act, and lose our award, in the event of such an alteration to the statute.

52. Would it not be open for the union to apply to the Court for another award?—I say this: there are five specific legislative sections each one trying to make the Court conform to the statute.

53. Now, Mr. Carey, did not the Arbitration Court, when hearing your last dispute, refuse to fix certain matters which were being settled by legislation. Has not the Court in its awards said so? Is not that a fact?—Yes.

54. Does that show any conflict between the Court and the Legislature?—Yes, we had under the Board's recommendation a half-day and a whole day. The Court refused the holidays. Our case was heard before the passing of the Bill, and the award made after the Bill was passed. The remarkable position is this: that only in the hotel-trade awards does this state of things exist. If any alteration is made by legislation then hotel and restaurant workers lose their awards and the Act benefits. Other unions in other shop trades do not. My suggestion to the Committee is that this Act be considered so as to entirely leave all reference to the Court out, the same as is done in Australia.

55. Mr. Carey, I want an answer to this question: Is it equitable that the Court should say that an award that is based upon certain hours and conditions shall cease to operate as soon as the basis of these conditions is altered?—The Court's awards are based on a weekly wage.

56. I ask you as a man, is it an equitable provision for the Court to make?—Yes; we never objected to that if provided for as indicated in clause 20 of our 1908 award. Now we are told by the Court if there is any alteration in a law that because of that alteration the unions of hotel workers shall be penalized and denied all the privileges and benefits of the Arbitration Act.

57. *Mr. Long.*] Mr. Carey, is it not the position that if an award is got from the Court for a period of three years, and if within one month afterwards there was an alteration by legislation in the direction of hours and holidays, that they would have to wait all that time before they get the benefit of it?—Well, Sir John Findlay says the Court's clause means one thing and the Labour Department adviser says it means another. I asked His Honour the President of the Court to give an interpretation, but he did not touch the point. This is what I fear, sir: Suppose we go to the Court and secure an award for three years, and there is an alteration subsequently made by the Legislature in some existing statute which we have never asked for, then for the term of the award—that is, for three years—we will be bound to freedom of contract and denied the benefits of an award and the Arbitration Act for that time.