

with the licensed hotels. Notwithstanding that fact the Court refused to make an award, and this is His Honour's written judgment; and it has a direct bearing on this Bill:—

In the Court of Arbitration of New Zealand, Northern Industrail District.—In the matter of an industrial dispute between the Auckland Hotel and Restaurant Employees' Industrial Union of Workers and E. F. Black and others, employers.—Hearing, Auckland, 29th September and 4th October, 1911.

JUDGMENT OF THE COURT, DELIVERED BY SIM, J.

IN this case the union has selected fourteen out of a large number of boardinghouses in the City of Auckland, and has asked the Court to make an award in respect of them. The ground on which the application is based is that these fourteen houses are private hotels, and constitute, it is claimed, a separate and distinct class by themselves. As pointed out in the Christchurch case (Book of Awards, Vol. x, p. 507), private hotels are only boardinghouses under another name, and it was laid down by the Court in that case that an award should only be made in connection with a particular class of boardinghouses, if it is established that the class can be clearly defined, and that it is necessary or desirable to make an award with regard to that particular class. It was asserted by Mr. Long, who represented the union, that the fourteen houses selected by the union formed a clearly defined class by themselves. He did not offer, however, any evidence in support of this assertion, and it might be treated as not having been proved.

In the case of the Rotorua boardinghouses (Book of Awards, Vol. xi, p. 149) the Court was able to make an award with respect to them, because they formed a special class by themselves. They catered for the tourist traffic, had a recognized tariff, and all carried on business in very similar conditions. It is difficult to believe that any such distinct class of boardinghouse can be found in a city like Auckland, and probably the reason why the union did not attempt even to prove the existence of such a class was the fact that it did not exist. The case must be treated, therefore, as governed by the decision in the Christchurch case, and the application for an award refused.

The evidence called by the union related almost entirely to the long hours of work in some of the houses in question, and it was urged that this constituted a ground for interference by the Court. This was the principal reason for making an award in the Rotorua case (Book of Awards, Vol. x, p. 149). Since, however, that award was made the Legislature has dealt, apparently, with the hours of work in private hotels by the Shops and Offices Act, 1910. We say apparently because, according to Mr. Long's statement, the Labour Department has been advised that the Act does not apply to private hotels. Mr. Long complains that although his union has disputed the soundness of this view, the Labour Department has refused to take proceedings to have the question determined by a Court of law.

Whatever be the right view of the question in dispute between the union and the Department, it is plain from recent legislation that Parliament has decided itself to regulate the hours of work in hotels, restaurants, oyster-saloons, and tea-rooms, it would not be proper now for this Court to attempt to deal with the subject. It is simply useless, therefore, to ask the Court to make any alteration in the hours of work in these places of business.

Mr. McCullough does not concur in this judgment. He has expressed his view in a separate memorandum.

Dated this 4th day of October, 1911.

W. A. SIM, Judge.

MR. MCCULLOUGH'S DISSENT.

The present is not the first time the Court has refused to make an award for employees engaged in private hotels. On the first occasion the Court refused I recorded my dissent from that finding (Book of Awards, Vol. x, p. 50). I am still strongly of opinion that an award could be made, more particularly as the Government has not seen fit to put into operation the clause in the Shops and Offices Act, 1910, dealing with the hours worked by employees in private hotels. If this were done it would certainly remove the reproach that can now be made of sweating the employees engaged in private hotels.

It was shown in evidence, and not denied, that quite young girls were engaged on duty from seventy-five to ninety hours per week, with a half-holiday on only one day of the fortnight from 3 p.m., with wages as low as 10s. per week. The Court declines to provide working-conditions and the Legislature to regulate the hours. As the workers' representative on the Court, I therefore protest against the continuance of such a disgraceful state of affairs as is found to exist among the hundreds of young men and women engaged in the private hotels in the Dominion.

Now, sir, it has been stated here that matters of this kind should be left to the Court. The Court on this particular occasion lays it down emphatically that it declines to interfere in the question of holidays, or working-hours, or matters of that kind, because it has already been dealt with by the Legislature, and the Court has actually refused to do this. After the opinion expressed by His Honour Mr. Justice SIM I got into communication with the Labour Department and requested them to take action against the proprietress of the Glenalvon Private Hotel for employing their staff longer than the hours provided for in the Shops and Offices Amendment Act, 1910. The case was heard before Mr. F. V. Frazer, S.M., in Auckland, on the 30th January, 1912, and a written judgment was delivered by the Magistrate as follows, which is reported in the *Labour Journal*, No. 230, page 248:—

The defendant is charged, on the information of the Inspector of Factories, that "being the occupier of a shop within the meaning of the Shops and Offices Amendment Act, 1910—to wit, Glenalvon Private Hotel—she did fail to keep at all times a wages and time book as required by the said Act."

The following statement of facts was agreed on by counsel: (1.) The defendant is the proprietress of a large first-class boardinghouse in the City of Auckland, known as "Glenalvon." (2.) The said boardinghouse has a weekly and a daily tariff. (3.) The defendant does not cater for lodgers or customers who will remain in the house for less than two days, but occasionally a lodger may remain for less than two whole days. (4.) The defendant does not sell meals to persons who are not lodgers, but occasionally provides meals for guests of lodgers, in which case the meal supplied to the guest is charged to and paid for by the lodger. (5.) The defendant does not now, nor has she ever, kept a "wages and time book" as defined by the said Act.

It was contended on behalf of the informant that "Glenalvon" was a private hotel, and came within the definitions of restaurant and a shop under the Act, and that consequently the provisions relating to the keeping of a wages and time book were obligatory upon the defendant.

By section 2 of the Shops and Offices Amendment Act, 1910, the word "hotel" is defined as meaning "any premises in respect of which a publican's license is granted under the Licensing Act, 1908"; while the word "restaurant" means "any premises (other than a hotel) in which meals are provided and sold to the general public for consumption on the premises, and whether or not lodging is provided for hire for the accommodation of persons who desire to lodge therein, and includes a private hotel, a tea-room, and an oyster-saloon." Section 3 extends the definition of a "shop" so as to apply to hotels and restaurants as defined by section 2, and section 12 requires the occupier of every "shop" in which one or more assistants are employed to keep a "wages and time book."

It is first necessary to consider the effect of the concluding words of section 2—"and includes a private hotel, tea-room, and an oyster-saloon." The question was raised whether this part of the section was to read exclusively or inclusively. I have read the judgments of the Court of Appeal and of the Privy Council in *Commissioner of Stamps v. Dilworth's Trustees* (N.Z. L.R. xiv, 729; 1899 A.C. 99), and have come to the conclusion that it is to be read inclusively—that is, that the meaning of the word "restaurant" is not limited to the three classes of premises covered by the general words of the definition. That this is so is apparent when one considers that a tea-room and an oyster-saloon do not,