

- (1) The scattered nature of the industry, which would make enforcement difficult and costly, especially as farmers would resent such inquisitorial conditions.
- (2) The magnitude of the interests involved, and the serious consequences to the prosperity of the country that would ensue were regulation by the Court to have adverse effects on the national production. The Court would have to be assured before it took action that the magnitude of the grievances to be redressed was very considerable, that the intervention of the Court would be effectual, and that the benefits to be obtained would outweigh the mischief due to intervention.
- (3) Mere discontent with wages and a desire for higher wages are not evidence of sufficient grievance or dissatisfaction.
- (4) It seems impossible to make an award that will be fair and workable, especially as to hours and wages, without unduly hampering farming.
- (5) Owing to the nature of farm work and its dependence on weather conditions it is impossible to fix regular hours.

This decision to refuse an award aroused much comment in labour circles at the time, yet in that very year Parliament, in the amending Act of 1908, justified the refusal of the Court to make an award by passing what is now section 153 of the present Act, which reads as follows: "When an industrial dispute has been referred to the Court, the Court may, if it considers that for any reason an award ought not to be made in the matter of that dispute, refuse to make an award therein." The position is, therefore, that a very distinguished Judge thought no award ought to be made in the farming industry, and Parliament in the same year impliedly confirmed his view by passing the above section to the Act.

This case was followed *in re Otago and Southland Musterers* (Book of Awards, Vol. XX, p. 1405), and again by the present Judge (Mr. Justice Frazer) *in re Otago and Southland Farm Assistants* (Book of Awards, Vol. XXVA, p. 771). Here an award for general farm hands was refused partly because of the small membership of the union, partly because there was insufficient proof of general dissatisfaction with conditions, but mainly because it is impossible to make an award owing to the general conditions of the farming industry. Conditions vary according to the type of farming carried on, (dairying, wheat, pasture, orchards, &c.), soil, weather, locality, transport conditions, type of crops, and markets. There is also variation from farm to farm and district to district, making uniform conditions impossible.

The union is merely asking that the established practice of the Court be given statutory recognition, and that the views of three Judges and a previous Parliament be given legislative effect as a safeguard for the future, and that existing hampering conditions be remedied. Farming is essentially different from manufacture, which involves repetition of standardized processes that can be reduced to a uniform routine. You can have uniform conditions in manufacture, but not in the primary industries. Hours in farming depend on the weather, and so does the specific work to be done at any time. The weather cannot be induced to obey the Court of Arbitration, neither can an industry which depends on the weather, as farming does. Farming cannot be made a matter of supervised routine.

The essence of the union's contention is that farming is (a) vital to the national prosperity; (b) quite unsuited to standardized schedule methods of working; (c) dependent on the weather; (d) infinitely varied as to crops, processes, soil, locality, transport, and markets; (e) dependent on a market which is situated abroad, where costs cannot be passed on; (f) in a difficult and precarious condition at the present time, and less able to bear harassing restrictions than at any previous time in our history; (g) unable to pass on additional costs occasioned by interferences of the Arbitration Court.

(E) *The basis upon which award rates should be fixed.*

The union advocates the passage into law of section 19 of the 1927 amending Bill.

At present the function of the Court is to arbitrate between the immediate parties without any necessary consideration of the public interest, so that it is possible for both sides to come to a wage agreement inequitable to the public, and pass it on. As long as the employer is assured of his ability to pass on wage increments, with a profit on them, he will not make any serious resistance, and will not study the public. It is submitted that it should be made the duty of the Court to consider not only the standard of living—which admittedly is a factor in the situation—but the effect on the consuming public, the general position of the Dominion, and the specific position of the industry affected. As it is, the Court is an arbitral tribunal only between the immediate parties; it should be bound by law explicitly to take into consideration these wider issues. This still leaves the Court its unfettered discretion after it has considered all the factors of the economic situation, but forces it to consider such factors, a thing it is not compelled to do at the present time. The present Act lays down no principles of wage determination.

The decision *in re Inangahua Gold-miners* (Book of Awards, Vol. XIX, p. 1055) and the dicta of the Judge therein show that this amendment is necessary as a safeguard of the public interest. The Court laid down the dangerous proposition that if any industry cannot pay its workers "a reasonable living-wage," then in the interests of the community that industry should close down. The expression "reasonable living-wage" is very elastic, and might justify the contention, "Either you pay the wage fixed, or get a Government subsidy, or close down." This is also the attitude in Australia. If such a dictum were applied to the minimum anti-sweating wage it would be well enough, but taken in its full extent it means that labour must in periods of national adversity get as high a wage as in periods of prosperity, when industry could carry the burden. There is no reason why labour should, above the anti-sweating minimum, be exempted from the fluctuations of national prosperity. The enactment of this clause, which was in operation during the post-war period, would compel the Court to consider what an industry can stand before making an award. It is equitable and in the public interest that this should be so.