

of a judicial attitude. It is contrary to ideas of British justice that members of a Court should be elected by litigants, and that they should lose their position if they give a judgment that greatly displeases any party or section of the community. What work they now do for their respective sides could be done, and should be done, as advocates from the body of the Court. Their partisanship simply cancels each out as a determining factor, and they are of little assistance to the Judge, but rather an obstruction to him. There is always a tendency for such elective judges to take their instructions from their constituents outside rather than focus their attention on the merits of cases submitted to the tribunal.

The union considers that parties substantially concerned or interested in the matter of a dispute before the Court should have the right to appear, lead evidence, and address the Court, so that all aspects of the problem will be considered when an award is made. It is particularly essential that this should be done where costs as between the immediate parties can be passed on, notably increased costs in the freezing or transport industry. The union bases its contention on the following grounds:—

(1) It is impossible to regulate a dispute in a satisfactory manner unless the position of those directly or indirectly affected by the decision is placed before the Court at the same time. In order to save time, the Court tends to concentrate on the immediate issues, and thus deals only with the immediate problem of arbitration between the litigants, without the position of affected third parties being considered. Farmers, for example, bear the whole cost of wage-increase granted to transport workers and freezing-works employees. They are really parties to the proceedings, in the sense that they will have to pay the piper, and yet they cannot be heard in their own defence. It is a principle of universal justice that no party should be damned without being heard in his own defence. The present situation is inequitable.

(2) The farming industry is the backbone of our economic life, and any alteration in its working-conditions should be made only after the fullest investigation of those conditions and the effect of such alterations on the prosperity of the industry. Manufacturing industries in New Zealand are secondary in fact as well as in name. Mistakes made in regulating them are of much less grave significance to the Dominion. Mistaken regulation of farming, which has to bear the full brunt of a highly competitive world market, and meet the competition of other countries that do not hamper their economic life by an arbitration system, might seriously impair our national life and cripple or ruin our credit. We cannot afford to take risks in regulating the staple industry of the country.

(3) The ultimate impact of the labour protective system is on the unsheltered producers, and the immediate impact of awards in related industries is on the farmers. It is therefore desirable that the viewpoint of the farmer should be presented when such matters come before the Court for consideration.

(4) Farming representation would bring out the full implication of any proposed change, and show the effect of an award on such related factors as land-fertility, interest, and bank overdraft rates, and other related factors that will be modified if wages are affected. A rise in wages must come from somewhere, and farmers should have the opportunity to argue the incidence of the charge before the Court before it makes an award that may seriously disturb industrial conditions in ways that are not obvious on the surface. This necessitates third-party representation.

(5) The Employers' Federation has interests that conflict with those of the farmers to such an extent that farmers and their interests cannot adequately be represented by a body representing industrial employers, who are often only nominally affected by an award, the cost of which they can pass on.

(6) The fact that the representation of third parties would cause delay is not an argument against it. Litigation cannot avoid delay if the issues are complicated. The trouble is that far-reaching innovations have been inaugurated with too little delay and consideration in the past.

It is doubtful to what extent third-party representation is possible at the present time. *In re Kaitangata Miners* (Book of Awards, Vol. XIII, p. 617) Mr. Justice Sim held that the Court had inherent jurisdiction to permit it, but that it lay in the discretion of the Court, and would be allowed only in exceptional cases. Possibly section 106 of the present Act was passed in 1920 to meet the case, but it does not do it adequately, is obscure in its terms, and does not seem to have been the subject of interpretation by the Court. It applies only to organizations "connected with the industry," and it is not clear what this means. Also, it is at the discretion of the Court or Commissioner.

It seems impossible to frame a satisfactory legal definition of what constitutes a "substantial interest." The union therefore asks for the enactment of a clause to the following effect:—

- (a) That parties substantially interested in a dispute before the Court shall be allowed to be represented, lead evidence, cross-examine witnesses, and address the Court; and also the Conciliation Council.
- (b) That the New Zealand Farmers' Union should be the officially recognized representative body for farmers.
- (c) That farmers shall be deemed to have a substantial interest in disputes arising in the freezing industry, waterside work, land and sea transport, threshing, and all other industries connected with or ancillary to the farming industry.
- (d) That in other cases the Court shall decide what parties claiming a hearing shall be deemed to have a substantial interest.
- (e) That applications under section 20 of the 1927 amending Bill be allowed to be made by parties having a substantial interest.

(H) *Preference to unionists.*

The union has no objection to preference to unionists under proper safeguards for reasonable continuity of industry on the part of the persons or union enjoying the preference. The union feels that as long as the system obtains it is reasonable to hold that if unions agree to abandon direct action