

## HOUSE OF REPRESENTATIVES

## Supplementary Order Paper

Friday, 8 June 1984

## WHANGAREI REFINERY EXPANSION PROJECT DISPUTES BILL

*Proposed Amendments*

Right Hon. Mr THOMSON, in Committee, to move the following amendments:

*Clause 2:* To insert in the definition of the term "project employer", after the word "of" in line 22 on page 2, the words "paragraph (a) of".

To insert in the definition of the term "project employer", after the word "workers" in line 36 on page 2, the words "on the Whangarei Refinery Expansion Project".

To omit the definition of the term "project worker" (all the words in lines 39 to 45 on page 2 and in lines 1 to 6 on page 3), and substitute the following definition:

"Project worker"—

(a) Means any worker whose employment is subject

to—

- (i) The Whangarei Refinery Expansion Project—Composite Agreement, dated 29 October 1982; or
- (ii) The Whangarei Refinery Expansion Project Catering Staff—Collective Agreement (Voluntary), dated 15 November 1982; or
- (iii) The Whangarei Refinery Expansion Project Security Officers—Collective Agreement (Voluntary), dated 15 November 1982; or
- (iv) Any award or agreement that supersedes wholly or partially an agreement specified in subparagraph (i) or subparagraph (ii) or subparagraph (iii) of this paragraph; and

(b) Includes any worker who is employed on the Whangarei Refinery Expansion Project by a project employer:

To insert in subclause (3), after line 20 on page 3, the following paragraph:

- (ab) A condition that the project worker will not engage in any intimidatory or dangerous conduct towards the scaffolders named in paragraph (a) of this subsection or any of them:

To insert in **paragraph (e) of subclause (3)**, after the word “work” in line 44 on page 3, the words “(other than a stoppage of work proved by the project worker to be justified on the grounds of safety or health)”.

Clause 3: To omit this clause, and substitute the following clause:

**3. Obligation of workers to report for work on 11 June 1984**—(1) Every person who was, on the 24th day of May 1984, employed as a project worker, whether or not that person was on that date on strike or otherwise in breach of that person’s contract of employment, shall, in accordance with the terms and conditions of employment applying on that date in respect of that person’s work as a project worker, report for work on the 11th day of June 1984.

(2) **Subsection (1)** of this section shall apply in respect of any person notwithstanding that the project employer by whom that person was employed as a project worker on the 24th day of May 1984 has, at any time in the period beginning on that date and ending with the close of the date on which this Act is passed, dismissed or purported to dismiss that person from his employment.

(3) **Subsection (1)** of this section shall not apply in respect of any person—

- (a) Who has, at any time in the period beginning on the 24th day of May 1984 and ending with the close of the date on which this Act is passed, entered the employment of any employer (other than the employer by whom that person was employed on the 24th day of May 1984); and
- (b) Who is, as at the 11th day of June 1984, not a project worker.

Clause 4: To omit this clause, and substitute the following clause:

**4. Obligation of project employer to allow workers to resume work**—(1) Where a person to whom **section 3 (1)** of this Act applies reports for work on the 11th day of June 1984 in accordance with that section to the project employer by whom that person was employed as a project worker on the 24th day of May 1984, that project employer—

- (a) Shall allow that person to resume normal work in accordance with the terms and conditions of employment applying in respect of that work on the 24th day of May 1984; and
- (b) If the project employer has dismissed that person since the 24th day of May 1984,—
  - (i) Shall offer to re-employ that person on the same terms and conditions as applied on the 24th day of May 1984; and
  - (ii) Shall, if that person accepts the offer of re-employment, re-employ that person accordingly.

(2) Where a person is re-employed by a project employer pursuant to **subsection (1)** of this section, the service of that person as a project worker shall, notwithstanding that that person was not employed by that project employer for the whole or any part of the period beginning on the 25th day of May 1984 and ending with the close of the 11th day of June 1984, be deemed to have been continuous for the purpose of any rights and benefits that are conditional on continuous service.

(3) Nothing in this section confers on any person an entitlement—

- (a) To receive any remuneration by way of salary, wages, allowances, or other emoluments in respect of the whole or any part of the period specified in **subsection (2)** of this section; or
- (b) To receive more than once any benefit to which, in accordance with the terms and conditions of employment applying in respect of that person's work, that person would have been entitled to receive only once if that person's service as a project worker had been continuous.

*Clause 4A:* To insert, after *clause 4*, the following clause:

**4A. Suspension of re-employed project workers where work not available—**(1) Where—

- (a) Any persons to whom **section 3 (1)** of this Act applies fail to report for work on the 11th day of June 1984 in accordance with that section; and
- (b) Any project employer is, because of the failure of all or any of those persons to report in accordance with that section, unable to provide for any persons re-employed by the project employer pursuant to **section 4 (1)** of this Act work that is normally performed by them,—

that project employer may suspend the employment of all or any of the persons so re-employed until that project employer is able to provide for the persons so re-employed work that is normally performed by them.

(2) Where a person resumes employment with a project employer following that person's suspension by that project employer pursuant to **subsection (1)** of this section, the service of that person as a project worker shall be deemed to have been continuous for the purposes of any rights and benefits that are conditional on continuous service.

(3) Subject to any decision of the Court on an appeal under **subsection (4)** of this section, where any person is suspended under **subsection (1)** of this section, that person shall, notwithstanding anything in **subsection (1)** or **subsection (2)** of this section, not be entitled—

- (a) To receive from the project employer any remuneration by way of salary, wages, allowances, or other emoluments in respect of the whole or any part of the period of that person's suspension; or
- (b) To receive more than once any benefit to which, in accordance with the terms and conditions of employment applying in respect of that person's work, that person would have been entitled to receive only once if that person's service as a project worker had been continuous.

(4) Where any person is suspended pursuant to **subsection (1)** of this section, that person or any union representing that person may appeal to the Arbitration Court against the suspension.

(5) The appellant shall—

- (a) Within 14 days after the date on which the decision to suspend the person is made known to the person, give to the employer written notice of the appellant's intention to appeal; and

(b) Within 7 days after the date on which that notice has been given, lodge with the Registrar of the Court a written notice of appeal.

(6) On any appeal under **subsection (4)** of this section the Court may confirm or reverse or modify the decision appealed against, and may make such other order as it thinks just.

*Clause 5:* To add, as subclauses (2) and (3), the following subclauses:

(2) Nothing in **subsection (1)** of this section prevents any project worker from becoming a party to a strike that is not in contravention of—

(a) **Section 7 (1)** of this Act; or

(b) Any other Act; or

(c) Any award or collective agreement.

(3) This section shall come into force on the 11th day of June 1984.

*Clause 7:* To add the following subclause:

(6) This section shall come into force on the 11th day of June 1984.

*Clause 8:* To insert in line 35 on page 6, after the word “Act”, the words “(other than **section 7**)”.

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## EXPLANATORY NOTE

*Clause 2:* The proposed amendments are, with 2 exceptions, tidying-up amendments.

The first exception is the new *paragraph (ab) of subclause (3)* which makes it a condition of employment of each project worker that the project worker will not engage in any intimidatory or dangerous conduct towards the 8 scaffolders named in *paragraph (a)* of that subclause or any of them.

The second exception is the addition to *subclause 3 (e)* (which requires each project worker to accept and abide by, without stoppage of work, the disputes and personal grievance procedures) of the usual qualification in respect of stoppages proved by the project worker to be justified on the grounds of safety or health.

*Clause 3:* The only change of significance is in *subclause (1)* of the new clause. Subject to certain exceptions, that subclause imposes on every person who was, on 24 May 1984, employed as a project worker an obligation to report for work on 11 June 1984. Words inserted in the clause make it clear that that obligation is imposed whether or not the person was on 24 May 1984 on strike or otherwise in breach of the person's contract of employment.

*Clause 4:* The clause contains 2 new subclauses.

*Subclause (2)* deals with the question of continuous service.

*Subclause (3)* makes it clear that *clause 4* does not confer on re-employed project workers entitlements to certain benefits, such as remuneration, in respect of the whole or any part of the period beginning on 25 May 1984 and ending with the close of 11 June 1984.

*Clause 4A:* This new clause, which is based on section 128 of the Industrial Relations Act 1973, enables a project employer to suspend re-employed project workers if, because of a failure on the part of other project workers to report for work, the project employer is unable to provide for the re-employed project workers work that is normally performed by them.

The project worker or his union may appeal to the Arbitration Court against the suspension.

*Clause 5:* The proposed new *subclause (2)* provides that nothing in *subclause (1)* prevents any project worker from becoming a party to a strike that is not in contravention of—

- (a) *Section 7 (1)* of the Act; or
- (b) Any other Act; or
- (c) Any award or collective agreement.

The proposed new *subclause (3)* brings *clause 5* into force on 11 June 1984.

*Clause 7:* The proposed new *subclause (6)* brings *clause 7* into force on 11 June 1984.

*Clause 8:* The proposed amendment excludes, from the ambit of *clause 8 (a)*, the inciting or instigating or aiding or abetting of breaches of *clause 7*. This matter is specifically dealt with in *subclause (4)* of *clause 7*.