

RAILWAYS CLASSIFICATION BOARD.

No. 35 of 1977.

AN ACT to amend the Railways Classification Board Act, 1920-1959.

[Assented to 7th November, 1977.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Railways Classification Board Act Amendment Act, 1977*.

Short title and citation.

(2) In this Act the Railways Classification Board Act, 1920-1959 is referred to as the principal Act.

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(3) The principal Act as amended by this Act may be cited as the Railways Classification Board Act, 1920-1977.

Commence-
ment.

2. (1) Subject to subsection (2) of this section the provisions of this Act shall come into operation on the date on which this Act receives the Royal Assent.

(2) The provisions of sections 6, 7, 12, 15 and 16 of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation.

Long title
amended.

3. The long title of the principal Act is amended by adding after the word "Railways" in lines two and three the passage ", to authorise The Western Australian Government Railways Commission to Reclassify Positions in Certain Circumstances".

Section 7
amended.

4. Section 7 of the principal Act is amended—

(a) by adding after the word "member" in line one of subsection (2) the passage ", other than the Chairman,"; and

(b) by repealing subsection (3) and substituting subsections as follows—

(3) A deputy member of the Board shall be appointed by the Governor and shall be—

(a) in the case of the deputy of the Chairman, some other duly qualified person;

(b) in the case of the deputy of a member appointed on the nomination of the Commission, some other person to be nominated by the Commission;
or

(c) in the case of the deputy of an elected member, some other person to be elected in the prescribed manner by the W.A. Railway Officers' Union.

(4) The provisions of this Act relating to tenure and forfeiture of office, retirement, and eligibility for re-appointment of members shall apply to deputy members appointed pursuant to subsection (3) of this section.

5. Section 9 of the principal Act is amended by adding after the word "members" in line one the words "and deputy members".

Section 9 amended.

6. The principal Act is amended by repealing section 12.

Section 12 repealed.

7. Section 14 of the principal Act is amended by deleting the passage "and assessors," in line two.

Section 14 amended.

8. Section 15 of the principal Act is amended—

Section 15 amended.

(a) as to subsection (1b) by deleting the word "Act" in line three of subparagraph (i) of paragraph (a) and substituting the word "section"; and

(b) as to subsection (2)—

(i) by deleting the word "and" after paragraph (d); and

(ii) by adding after paragraph (e) the word "and" and a paragraph as follows—

(f) whether protective clothing shall be provided for an officer or class of officers and the circumstances in which protective clothing shall be provided, .

9. The principal Act is amended by adding after section 15 a section as follows—

Section 15A added.

15A. (1) Where any salaried position or office in the service of the Commission, except the position of head or subhead of a branch,

becomes vacant by reason of the retirement, resignation or voluntary transfer of an officer from that position or office, the Commission may, notwithstanding section fifteen or twenty-two A of this Act, reclassify that position.

(2) Notwithstanding that a salaried position or office has been classified or reclassified by or under a decision or award of the Board, the Commission shall not be regarded as having—

(a) failed to give due effect to that decision; or

(b) failed to comply with the provisions of that award,

within the meaning of section twenty-two B of this Act by reason only that it has reclassified that position or office pursuant to subsection (1) of this section.

(3) The W.A. Railway Officers' Union may appeal to the Board against a reclassification made by the Commission pursuant to subsection (1) of this section.

(4) The Board shall have jurisdiction to hear and determine an appeal under subsection (3) of this section and, for the purposes of such an appeal, the W.A. Railway Officers' Union shall be a claimant within the meaning of this Act.

Section 16
amended.

10. Section 16 of the principal Act is amended by adding after subsection (2) subsections as follows—

(3) The Board may, in a decision, award or variation of an award, give such retrospective effect to that decision, award or variation as the Board may consider equitable but not beyond—

(a) the date of the filing with the Board of the claim in respect of which that decision, award or variation of award was given or made; or

(b) such earlier date as the parties may agree.

(4) In subsection (3) of this section a reference to a decision, award or variation of an award includes a reference to a part of that decision, award or variation, as the case may be. .

11. Section 17 of the principal Act is amended— Section 17
amended.

(a) by inserting before the word “The” in line one the subsection designation “(1)”; and

(b) by adding subsections as follows—

(2) The Board, in deciding or determining any claim, may take into account any matter or information that relates to the claim, but where the Board proposes or intends to take into account any matter or information that was not raised before it on the hearing of the claim the Board shall notify the parties to the hearing and afford them the opportunity of being heard in relation to that matter or information.

(3) A notification by the Board under subsection (2) of this section shall be given to the parties to the hearing before any minutes in which any matter or information referred to in the notification has been taken into account are issued to those parties.

(4) In deciding or determining any claim the Board shall not be restricted to the specific claim then before the Board and may, subject to subsection (5) of this section, decide or determine any other matter.

(5) If the Board proposes to decide or determine any matter not within the specific claim then before the Board for hearing the Board shall, before doing so, notify the parties to the hearing and afford them the opportunity of being heard in relation to the matter proposed to be decided or determined. .

Section 19A
added.

12. The principal Act is amended by adding after section 19 a section as follows—

Minutes of
decision.

19A. (1) Before a decision, award or variation of an award is given or made by the Board, it shall be drawn up in the form of minutes which shall be handed down to the parties concerned.

(2) The parties concerned or their accredited representatives shall, at a time fixed by the Board, be entitled to speak to the matters contained in the minutes handed down pursuant to subsection (1) of this section and the Board may, after hearing the parties or their accredited representatives, amend or vary the terms of those minutes before they are issued as a decision, award or variation of an award as the case may be.

Section 20
amended.

13. Section 20 of the principal Act is amended—

(a) by deleting the word “Every” in line one of subsection (4) and substituting the passage “Subject to subsection (3) of section sixteen of this Act, every”; and

(b) by adding after subsection (5) subsections as follows—

(6) The Board may, by its award, reserve to any party to the award liberty to apply to the Board to vary the award.

(7) Where the Board reserves to any party liberty to apply in accordance with subsection (6) of this section, it shall clearly indicate in the award—

(a) the circumstances in which;

(b) the conditions under which; and

(c) the part of the award in respect of which,

the liberty may be exercised.

14. Section 21 of the principal Act is amended— Section 21
amended.

(a) by repealing subsection (1) and re-enacting that subsection as follows—

(1) The Board may at any time—

(a) vary an award on application by a party to whom liberty to apply has been reserved in accordance with subsections (6) and (7) of section twenty of this Act, if the events have occurred or the circumstances have arisen which were in contemplation by the Board when it reserved liberty;

(b) vary an award on application by the Commission or by any claimant under the award, if in the opinion of the Board—

(i) circumstances have arisen which, at the time the award was made, or when the award was last varied in a relevant respect, could not reasonably have been foreseen by the parties; and

(ii) those circumstances render the award no longer just; or

(c) vary an award in a manner and to an extent agreed to by the parties to the award. ; and

(b) by adding after subsection (1a) a subsection as follows—

(1b) Where the Board is notified by the Commission that a salaried position or office classified under an award of the Board has been reclassified pursuant to subsection (1) of section fifteen A of this

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Act then, unless the Board upholds an appeal against that reclassification under subsection (3) of that section, the Board shall vary the award in accordance with that reclassification. .

Section 22
amended.

15. Subsection (1) of section 22 of the principal Act is amended by inserting before the word "*Gazette*" in line two the words "*Western Australian Industrial*".

Section 22B
amended.

16. Subsection (3) of section 22B of the principal Act is amended by deleting the word "Governor" where it occurs in lines seven, eight and twelve and substituting the word "Minister" in each case.

Section 24
amended.

17. Subsection (1) of section 24 of the principal Act is amended by adding after the word "members" in line two of paragraph (a) the words "and deputy members".
