

# PUBLIC SERVICE APPEAL BOARD.

11° GEO. V., No. XIV.

No. 14 of 1920.

**AN ACT to establish a Public Service Appeal Board, and to prevent the unauthorised cessation of work on the part of Public Servants.**

[Assented to 3rd December, 1920.]

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

1. This Act may be cited as the *Public Service Appeal Board Act, 1920.* Short title.

2. (1.) In this Act "public servant" means and includes any person who— Application of Act.

- (a) is employed in any capacity in the public service of the State as an officer within the meaning of that word in the Public Service Act, 1904; or
- (b) is employed on the teaching staff of the Education Department; or
- (c) is temporarily or provisionally employed under section thirty-six of the Public Service Act, 1904, or under section twelve of the Agricultural Bank Act, 1906, and has been so employed continuously for at least twelve months next preceding his appeal or application to the Board; or
- (d) is temporarily or provisionally employed under the regulations of the Education Department, and has been so employed for at least forty weeks during the twelve months next preceding his appeal or application to the Board.

(2.) Except as aforesaid and subject to subsections (2) and (3) of section six, this Act shall not extend to public servants to whom the Public Service Act, 1904, does not apply.

The Board,

3. (1.) A Board, to be known as "The Public Service Appeal Board," shall be established.

(2.) The Board shall be constituted as follows:—

(a) If the appeal relates to matters with which the teaching staff of the Education Department is not concerned, the Board shall consist of a judge of the Supreme Court who shall be chairman, one member to be appointed by the Governor, and one member to be elected in the prescribed manner by the members of the Civil Service Association of Western Australia:

(b) If the appeal relates to matters with which the teaching staff of the Education Department only is concerned, the Board shall consist of a judge of the Supreme Court who shall be chairman, one member to be appointed by the Governor, and one member to be elected in the prescribed manner by members of the State School Teachers' Union of Western Australia:

(c) If the appeal relates to matters in dispute which are common to the public servants including the teaching staff of the Education Department, the Board shall consist of a judge of the Supreme Court, who shall be chairman, and the four members appointed and elected as aforesaid:

Provided that the Public Service Appeal Board, as constituted by an Order in Council published in the *Gazette* on the twenty-third day of August, one thousand nine hundred and twenty, shall be deemed to have been duly constituted under this Act, and, subject to the passing of this Act, the proceedings and decisions of such Board shall have the same force and effect as if this Act had been in operation at the date of the said Order in Council, and the Board had been duly constituted under this Act:

But the members of the Board so constituted, except the chairman, shall retire at the expiration of six months from the date of the said Order in Council.

Tenure of office of  
members.

4. Subject to the proviso to the last preceding section, every member of the Board, except the chairman, shall hold

office for one year from the day upon which he shall first take his seat on the Board by virtue of his appointment or election, and shall be eligible for re-appointment or re-election.

5. In the absence of any member of the Board other than the chairman, or in case any such member is personally interested in an appeal or application, a deputy may sit in place of such member during his absence, or for the hearing of the appeal or application in which he is personally interested, and such deputy shall have all the powers and authority of a member of the Board. Deputy member.

The provisions of section three relating to the appointment and election of members of the Board shall extend and apply to the appointment or election of deputy members of the Board.

6. (1.) The Board shall have jurisdiction—

Jurisdiction of  
Board.

(a) to hear and determine any appeal by any public servant or class of public servants from the Public Service Commissioner (whether acting alone or in conjunction with Assistant Commissioners) or the Minister of Education, in respect of—

(i) the classification, re-classification, salary, or allowances of such public servant or class of public servants, or his or its office or offices; or

(ii) any decision involving the interpretation or application of the provisions of any Act or regulation governing the service of such public servant, or class of public servants;

(b) to hear and determine appeals by the Minister of the Department affected from the decisions of the Public Service Commissioner (whether acting alone or in conjunction with Assistant Commissioners) relating to the classification, re-classification, salary, or allowances of any public servant, or class of public servants, or his or its office or offices;

(c) to hear and determine any application by a public servant for the redress or correction of any anomaly in treatment affecting him in respect of classification, salary, or position, with power to

direct that any adjustment the Board may deem necessary shall, in the special circumstances of any particular case, have effect from the first day of July, one thousand nine hundred and nineteen;

(d) to determine in regard to any public servant who, on the thirty-first day of July, one thousand nine hundred and twenty, was in a class carrying a salary above £252 per annum, or in regard to the public servants in any class which on the said date carried a salary above £252 per annum, whether an allowance is necessary by way of immediate relief in view of the provisions of section nine of this Act, and to fix the amount of such allowance.

(e) to determine, from time to time, on the application of the Civil Service Association of Western Australia or the State School Teachers' Union of Western Australia, whether any and what amounts shall be added to the salaries of all or any public servants or of all or any public servants in any class, by way of temporary allowance, and to fix the period of time during which such allowance shall continue, and to determine on the application of the Public Service Commissioner, the Minister of Education, or the Minister of any Department concerned whether such temporary allowance shall cease or be reduced within such fixed period.

(f) to hear and determine the complaint of any public servant of alleged victimisation by reason of the recent simultaneous cessation of work on the part of certain public servants;

and to adjust all such matters as aforesaid.

(2.) Any person employed in the public service at a daily or weekly rate of wages, who is not a public servant within the meaning of section two of this Act, shall be paid in accordance with any award or industrial agreement under the Industrial Arbitration Act, 1912, applicable to workers of his class, whether such award or agreement is binding on the Crown or not.

If any question shall arise as to which of several awards or agreements is applicable, the Board shall determine which award or agreement shall apply.

Subject as aforesaid, the Board shall have jurisdiction to fix the rate of wages of any person to whom this subsec-

tion relates who is not a member of an industrial union or covered by any award or agreement under the Industrial Arbitration Act, 1912.

(3.) Any person who has been employed at a daily or weekly rate of wages for not less than five years continuously in a department of the public service within the Public Service Act, 1904, and whose duties are similar to those of an officer on the permanent staff, or such as are proper for an officer on the permanent staff to perform under such Act, may apply to the Public Service Commissioner for appointment to the permanent staff.

The Public Service Commissioner shall hear and determine such application, and state in writing his finding on the facts and decision, and an appeal shall lie to the Board from the finding of the Public Service Commissioner as regards all material facts and his decision thereon.

(4.) If any question shall arise, or at the commencement of this Act is pending, in any department of the public service as to the qualification of any person claiming a superannuation allowance under section one of the Superannuation Act, or the length of service of such person, or if any question shall arise, or at the commencement of this Act is pending, under any other section of the said Act as to whether, or for what period, any person has served in an established capacity in the permanent civil service, it shall be referred to the Board, whose decision shall be final.

(5.) For the purposes of this section "Classification" means a classification by the Public Service Commissioner or the Minister of Education, under the powers conferred by sections twelve and thirteen of this Act.

7. (1.) Any public servant, on behalf of himself or as representing any class of public servants, and any person to whom subsection (2) or subsection (3) of section six applies, or the Civil Service Association of Western Australia on behalf of any class or group of public servants or persons to whom subsection (3) of section six applies, or the State School Teachers' Union of Western Australia on behalf of employees on the teaching staff of the Education Department, may, in the prescribed manner, appeal or apply to the Board upon any matter within its jurisdiction affecting him or the class of public servants represented by him, or the class or group of public servants, persons, or employees represented by such association or union.

Right of appeal.

(2.) The Minister of any Department affected may, in the prescribed manner, appeal to the Board from any decision of the Public Service Commissioner (whether acting alone or in conjunction with Assistant Commissioners) relating to the classification, re-classification, salary, or allowance of any public servant or class of public servants, or his or its office or offices.

Sittings of Board  
and procedure.

8. (1.) The Board shall sit at such time and place as the chairman may appoint.

(2.) The Board may regulate its own procedure, and may conduct its inquiries without regard to legal forms, and shall direct itself by the best evidence it can procure or that is laid before it.

(3.) The Board may summon and examine witnesses on oath, and call for the production of papers and documents.

(4.) The Minister of a Department concerned, the Public Service Commissioner, and the Director of Education, may be represented before the Board, either jointly or separately on the hearing of an appeal.

(5.) Persons concerned in, or entitled to be represented on, an appeal or matter before the Board, may be represented by counsel or solicitor or other agent.

Retrospective effect  
of decisions.

9. With respect to the first classifications made by the Public Service Commissioner and the Minister of Education subsequent to the thirtieth day of June, one thousand nine hundred and twenty, the decisions of the Board relating to classification or salary shall have effect from the first day of July, one thousand nine hundred and twenty.

Report of decisions.

10. The decision of the Board or of a majority of the members of the Board shall in each case be reported in writing by the Board to the Governor, and shall be final; and effect shall be given to every such decision.

Record of  
proceedings.

11. The Board shall keep a record of its proceedings, which shall be open to public inspection and available for future reference.

Classification under  
Public Service Act.

12. Notwithstanding any provision of the Public Service Act, 1904, to the contrary, the classification of offices and officers under the Public Service Act, 1904, and the fixing of the salaries of officers, inclusive of officers in the Administra-

tive Division, shall be vested, and as from the thirtieth day of June, one thousand nine hundred and twenty, shall be deemed to have been vested, in the Public Service Commissioner, acting alone or in conjunction with Assistant Commissioners, subject to an appeal to the Board under this Act.

13. The classification of the teaching staff of the Education Department, and the fixing of the salaries and other remuneration to be paid to teachers, shall be vested, and as from the thirtieth day of June, one thousand nine hundred and twenty, shall be deemed to have been vested in the Minister of Education, subject to appeal to the Board under this Act.

Classification of Teachers.

14. No public servant shall be prejudiced in respect of privileges, promotion, or continuity of service, by reason only of the recent simultaneous cessation of work on the part of certain public servants:

Public servants not to be prejudiced by recent cessation of work.

Provided that nothing in this section shall affect the provisions of section sixty of the Public Service Act, 1904.

15. If, after the commencement of this Act, any public servant takes part in or does any act, matter, or thing in the nature of a strike he shall be guilty of an offence, and on conviction shall forfeit the privileges which otherwise he might have enjoyed under any Act or regulation relating to his service, including the Superannuation Act, and be liable to a penalty not exceeding ten pounds.

Strikes prohibited.

16. The Board may, in its discretion, order an applicant or appellant to forfeit and pay to the Colonial Treasurer a sum not exceeding five pounds if, in the opinion of the Board, any application or appeal is frivolous or unreasonable.

Frivolous appeal.

17. The Governor may make regulations—

Regulations.

- (a) for the nomination of candidates, the conduct of elections of members of the Board, and the preparation of rolls of public servants entitled to vote;
- (b) prescribing the time within which appeals and applications to the Board shall be made;
- (c) for enforcing the attendance of witnesses before the Board, and imposing a fine not exceeding ten pounds in case of non-attendance of any witness;
- (d) for the remuneration of members of the Board other than the chairman; and

- (e) for all such other matters arising under and consistent with this Act not herein expressly provided for, and otherwise for fully and effectually carrying out and giving effect to this Act.

Effect of this Act  
on existing Acts.

18. The Public Service Act, 1904, the Elementary Education Act, 1871, and its amendments, and the Superannuation Act, shall be construed and have effect, subject to this Act.

Repeal.

19. Sections ten and nineteen of the Public Service Act, 1904, are hereby repealed, and sections fifty-one and fifty-two thereof (as amended by the Act No. 10 of 1912) are hereby further amended as follows:—

The proviso to subsection (1) of section fifty-one, and the words “and may either maintain, increase, or reduce the value of the office, as defined by the Commissioner in the proposal appealed from or change the office from one division to another,” in subsection (1) of section fifty-two, and subsection (5) of section fifty-two, are omitted.

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