

RAILWAYS CLASSIFICATION BOARD.

No. 38 of 1920.

(Affected by Act No. 38 of 1945, s. 2.)

[As amended by Acts—

No. 33 of 1935 assented to 6/1/1936;

No. 20 of 1945 assented to 9/1/1946;

No. 4 of 1950 assented to 15/11/1950;

No. 19 of 1959 assented to 8/10/1959;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to provide for a Board for the Classification of the Salaried Staff of the Government Railways and to make provision for the recovery by the W.A. Railway Officers' Union of fines, fees, levies and dues owing by the members thereof.

Long title.
Amended by
No. 20 of
1945, s. 8.

[Assented to 31st December, 1920.]

BE it enacted by the King'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. This Act may be cited as the *Railways Classification Board Act, 1920-1959*, and shall be read as one with the Government Railways Act, 1904.

Short title.
Amended by
No. 19 of
1959,
s. 1.

2. In this Act, unless inconsistent with the context or subject matter—

“Accredited representative” means the accredited representative of any claimant or of the Commission, or any representative accredited by any number of officers, to make representations on any matter under investigation by the Board.

Interpreta-
tion.
Amended by
No. 4 of 1950,
ss. 3 and 4.
See Vict.,
No. 3006, s. 2.

Railways Classification Board.

“Board” means the Railways Classification Board constituted under this Act.

“Claimant” means any officer or officers whose claim (whether jointly or severally) is cognisable by the Board.

“Commission” means The Western Australian Government Railways Commission constituted pursuant to the provisions of the Government Railways Act, 1904-1948.¹

“Head of branch” means an officer in control of one of the recognised divisions of the staff, who receives his instructions from and communicates with the Commission directly.

“Magistrate” means a police or resident magistrate.

“Minister” means the Minister for Railways.

“Officer” means any person employed by the Commission at an annual rate of salary, or in receipt of a daily rate of pay as a temporary clerk.

“Prescribed” means prescribed by this Act or the regulations.

“Regulations” means regulations under this Act.

“Sub-head of branch” means an officer in control of some recognised section of a division of the staff, who receives his instructions from and communicates with the head of the branch directly.

Constitution
of board.
Amended by
No. 20 of
1945, s. 2.
No. 4 of 1950,
s. 4.

3. (1) For the purposes of this Act, there shall be a Board to be called the Railways Classification Board, appointed by the Governor and constituted as hereinafter provided.

(2) The Board shall consist of three members.

¹ Now Government Railways Act, 1904-1959.

(3) One member shall be a magistrate, or such other person as may be agreed upon between the Minister and the W.A. Railway Officers' Union, and such member shall be the chairman of the Board.

One member shall be a person nominated by the Commission.

One member shall be a person elected in the prescribed manner by the W.A. Railway Officers' Union.

(4) The members of the Board may be paid such fees and expenses as are prescribed.

4. (1) Subject to this Act, all members of the Board shall be appointed for a term of three years, and shall continue to hold office until their successors are appointed.

Tenure of Office.

(2) Any member of the Board shall be eligible for re-appointment.

(3) If any member of the Board dies, resigns, or is absent from more than three consecutive sittings of the Board without leave granted in writing by the Minister, his office as such member shall become vacant.

(4) No person who has been convicted of any crime or misdemeanour, or who has been dismissed from the railway service for misconduct, shall be capable of being or continuing a member of the Board.

5. (1) Any vacancy in the office of a member of the Board, occasioned by any cause other than triennial retirement, shall be filled within one month—

Extraordinary vacancies. Amended by No. 4 of 1960, s. 4.

(a) in the case of the chairman, by the appointment by the Governor of some other duly qualified person;

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

Railways Classification Board.

- (c) in the case of an elected member, by the election of some other person in manner aforesaid and his appointment by the Governor.

(2) Every member appointed to fill an extraordinary vacancy shall continue in office so long as the person in whose place he was appointed would have held office had he continued in office, and no longer.

Failure to elect.
Amended by No. 20 of 1945, s. 3.

6. If from any cause an elective member of the Board is not elected at or within the time appointed in that behalf, the Governor may appoint a person, nominated by the W.A. Railway Officers' Union, to be a member of the Board instead of the member who should have been elected, and the person so appointed shall be deemed to have been elected.

Deputy members.
Amended by No. 10 of 1945, s. 4.
No. 4 of 1950, s. 4.

7. (1) If at any time a member of the Board is personally and directly interested in a matter under investigation by the Board, or is absent from any meeting of the Board through illness or any other cause, his office may be filled temporarily by a deputy.

(2) In the event of a member and his deputy being both personally and directly interested in a matter under investigation by the Board, or in the event of both the member and his deputy being absent, the Governor may appoint on the nomination of the Commission or, in the case of an elected member, on the nomination of the W.A. Railway Officers' Union, a person to act in the place of the member so interested or absent.

(3) Deputy members of the Board shall be appointed by the Governor on nomination by the Commission or election by the officers, as the case may be, in like manner as the ordinary members of the Board are appointed, and the provisions of this Act relating to tenure and forfeiture of office, retirement, and eligibility for re-appointment shall apply to such deputy members.

8. For the purposes of any election, every officer shall be entitled to a vote.

Right to vote.

9. All elections of members of the Board—

Elections to be subject to Regulations. Amended by No. 20 of 1945, s. 5.

(a) shall be conducted in all respects in such manner as is prescribed; and

(b) shall be held at such times as are prescribed, under the direction of a returning officer to be appointed by the Governor, with scrutineers to be appointed by the W.A. Railway Officers' Union.

10. The appointment of the members and deputy members of the Board shall be notified in the *Gazette*, and shall take effect as from the date of such notification.

Notification of appointment.

11. The decision of the majority of the members present at a meeting of the Board shall be the decision of the Board.

Majority to decide.

12. (1) The Board in the exercise of their jurisdiction relating to classification, shall sit with two assessors, one to be appointed by the Commission and one to be elected in the prescribed manner by the officers, from each section of the salaried staff.

Assessors. Amended by No. 4 of 1950, s. 4.

(2) The assessors appointed or elected from each section of the salaried staff shall sit with the Board whenever the matter before the Board relates to their section of the salaried staff.

(3) The assessors shall assist the Board with their advice, but shall take no part in the determination of any matter.

(4) The assessors may be paid such fees as are prescribed.

13. The Commission may appoint from persons in the service of the Government Railways a clerk to the Board.

Power to appoint clerk. Amended by No. 4 of 1950, s. 4.

Cost of Board.

14. The fees and expenses of the members and deputy members of the Board, and assessors, and of and incidental to the Board's investigations, and the remuneration of the clerk to the Board, shall be deemed to be included in and shall form part of the working expenses of the Government Railways.

Jurisdiction of Board.
Amended by No. 4 of 1950, s. 5; No. 19 of 1959, s. 2.

15. (1) The Board shall have jurisdiction—
- (a) to classify all salaried positions in the service of the Government Railways, except heads and subheads of branches and such positions as are held by persons engaged in the service of the Government Railways in a professional capacity;
 - (b) to create classes, and to provide the minimum and maximum salaries of all positions in any class;
 - (c) to prescribe the method by which officers shall be advanced from the minimum to the maximum of the salary assigned to their positions, or from class to class;
 - (d) to hear and determine any appeal by any officer or class of officers in respect of the classification, reclassification, or salary of such officer or class of officers, or his or their office or offices.
 - (e) to hear and determine any application by the Commission in respect of the classification, reclassification or salary of any officer or class of officers or his or their office or offices.

(1a) The Board may make awards with respect to all or any of the matters referred to in paragraph (a), (b) or (c) of subsection (1) of this section.

(1b) (a) (i) When and as often as a salaried position or office is classified or reclassified, as the case may be, pursuant to the provisions of this Act, the position or office shall thereupon by force of this Act be regarded as vacant for the purposes of the Government Employees (Promotions Appeal Board) Act, 1945-1949,¹ notwithstanding that there is then an occupant in the position or office.

¹ Now Government Employees (Promotions Appeal Board) Act, 1945-1954.

(ii) Where some person other than such occupant is appointed to the reclassified position, the classification of such latter occupant shall not be affected merely by the reclassification or merely by his occupancy of the reclassified position for any period following the reclassification.

(b) The provisions of this subsection shall not prejudice or affect—

- (i) the meaning of the expression “vacancy” as used in that Act, but shall be in addition thereto;
- (ii) the continuity of the service of the occupant of the office.

(c) The provisions of this subsection shall be regarded as in operation on and from the seventeenth day of February, one thousand nine hundred and forty-eight and all notices, appeals, documents, acts, matters and things given, brought, executed or done in purported pursuance of that Act shall be as effective as would have been the case if this subsection had been incorporated in and formed part of this Act on and from that day.

(2) The Board may determine—

- (a) the maximum number of hours to be worked daily or in any period;
- (b) the maximum number of hours which a shift may extend;
- (c) the minimum interval for rest between shifts;
- (d) the maximum number of shifts to be worked weekly or in any period; and
- (e) what payment or allowance (if any) shall be made by reason of any condition of employment affecting remuneration (but not including payments of allowances in respect of accidents), such as payments of allowances to be made—
 - (i) for overtime or emergency work;
 - (ii) for Sunday, holiday, or night work;
 - (iii) for travelling time;
 - (iv) for relieving expenses;

- (v) for travelling or incidental expenses;
- (vi) for relieving in higher positions;
- (vii) for district allowances;
- (viii) for work performed under special conditions;
- (ix) for youths living away from home;
- (x) for sick pay, annual and long service leave;
- (xi) or any other matter submitted by mutual consent;

and may make awards with respect to any of the matters referred to in this subsection.

Powers of Board.
Amended by No. 4 of 1950, s. 4.

16. (1) The Board shall hear and determine all claims in public, unless in the circumstances of any particular case the Board shall otherwise decide.

(2) The Board may—

- (a) refer any matter to any person or persons for investigation and report;
- (b) enter upon any premises vested in the Commission to inspect any work and interrogate any officer in regard to such work;
- (c) make an order setting out the correct interpretation of any matter arising out of any award and referred to it for that purpose by any claimant or by the Commission or any accredited representative;
- (d) by order correct, amend, or waive any error, defect, or irregularity in any award;
- (e) proceed with the hearing or determination of any matter notwithstanding the absence of claimant or accredited representative if the Commission and any absent claimant or absent accredited representative concerned have received notice of the hearing.

Sittings of Board and procedure.

17. The Board—

- (a) shall sit at such time and place as the chairman may appoint;
- (b) 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;

- (c) may summon and examine witnesses on oath, and call for the production of papers and documents relevant to the case.

18. The Commission or the union, as the case may be, shall be furnished with a copy of every claim, at least fourteen days before the hearing thereof.

Copy of claim to be furnished. Amended by No. 4 of 1950, s. 4.

19. (1) The Commission and every claimant shall be entitled to make representation in regard to any claim, matter, or inquiry before the Board by means of an accredited representative.

Representation before Board. Amended by No. 4 of 1950, s. 4.

(2) Any accredited representative, subject to the approval of the Board, may call witnesses to give evidence on matters relevant to the claim, matter, or inquiry.

(3) No legal practitioner shall be allowed to appear before the Board, or to attend before the Board to advise any claimant or accredited representative.

20. (1) When any award is made by the Board, the chairman shall sign the same, and shall send a certified copy thereof to the Minister, and shall furnish copies thereof to the parties concerned.

Award. Amended by No. 4 of 1950, s. 4.

(2) The Commission, within fourteen days after an award is made, shall furnish the Minister with a report thereon.

(3) The Minister shall cause a copy of the award and of the Commission's report to be laid before both Houses of Parliament if then sitting, or if Parliament is not then sitting, within fourteen days after the next meeting of Parliament.

(4) Every award shall come into operation as from the date thereof or a subsequent date to be specified in the award.

(5) The term of an award may be any period specified therein not less than six months or more than three years.

Award may be varied. Amended by No. 4 of 1950, s. 4; No. 19 of 1959, s. 3.

21. (1) The Board may, subject to the provisions of subsection (1a) of this section, vary an award on application, at any time after the expiration of six months, by the Commission or by any claimant under such award, and may on the like application vary the award at any time after the expiration of a further period of six months.

(1a) Where the Board makes an award that includes any matter referred to in paragraph (a), (b) or (c) of subsection (1) of section fifteen of this Act, if any appeal or application, as the case may be, made to the Board under the provisions of paragraph (d) or (e) of that subsection in respect of the matter is upheld or granted by the Board, the Board shall as soon as practicable vary the award according to the tenor of the decision of the Board made on the appeal or the application.

(2) Every variation of an award shall be operative until the expiration of the term fixed in such award.

(3) Subject to this Act, every award or variation thereof shall remain in operation after the expiration of the term specified therein until superseded by a new award.

(4) The provisions of the last preceding section shall extend and apply to any variation of an award under this section as if such variation were a new award.

Publication of Award.

22. (1) Every award and every variation thereof shall be published in the *Gazette*.

(2) No award or variation thereof and no order of the Board shall be challenged, appealed against, reviewed, quashed, or called in question or be subject to prohibition or mandamus in any Court, on any account whatever.

Effect to be given to awards and decisions of the Board. S. 22A added by No. 33 of 1955, s. 2.

22A. Effect shall be given to every award and decision of the Board, according to the tenor thereof.

22B. (1) Where in the opinion of the executive committee of the West Australian Railway Officers' Union the Commission is not complying with the provisions of an award of the Board, for the time being in force, or where the Commission is not giving due effect to a decision of the Board in respect of an award made on the hearing of a claim by the Union or an officer or class of officers, the Union may in accordance with the regulations make application to the Board for the enforcement against the Commission of the award or the decision, and the Board may hear and determine the application.

Enforcement of awards and decisions of the Board, S. 22B added by No. 33 of 1935, s. 2; Amended by No. 20 of 1945, s. 6; No. 4 of 1950, s. 4; No. 19 of 1959, s. 4.

(2) Sections seventeen and nineteen of this Act shall apply *mutatis mutandis* to the hearing of an application under this section.

(3) If on the hearing of an application under this section the Board finds that the Commission is not complying with the provisions of the award, or is not giving effect to the decision of the Board, the Board shall submit a report of its findings, together with particulars of the manner in which the Commission is in default, to the Governor, and on receipt of such report the Governor shall cause any breach or dereliction by the Commission as mentioned in the report to be corrected, and the Commission shall forthwith obey and comply with any directions received by it from the Governor under this section.

23. The Board may order a claimant or an appellant to forfeit and pay to the Treasurer a sum not exceeding Five pounds if, in the opinion of the Board, any claim or appeal is frivolous or unreasonable.

Frivolous appeals. Amended by No. 4 of 1950, s. 6.

24. (1) The Governor in Council may make regulations for or with respect to—

Regulations.

- (a) all things necessary or preliminary or incidental to the election of members of the Board, including the nomination of candidates, the times for and manner of conducting elections, voting, voting by post, and the appointment and duties of returning officers; and

- (b) enforcing the attendance of witnesses before the Board, and imposing a fine not exceeding Ten pounds in case of non-attendance of any witness;
- (c) generally, all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying this Act into effect.

Industrial Arbitration Act not to apply.

25. The Industrial Arbitration Act, 1912,¹ shall not apply to officers under this Act, except with respect to matters pending in the Court of Arbitration at the commencement of this Act, but the industrial agreement and award current at the commencement of this Act shall continue in operation except so far as the same may, in the meantime, be varied by an award under this Act.

Recovery by W.A. Railway Officers' Union of fines, fees, levies and dues. S. 26 added by No. 20 of 1945, s. 7.

26. Notwithstanding anything to the contrary contained in the Trade Unions Act, 1902,² and while the W.A. Railway Officers' Union continues to be empowered to elect persons to be members of the Board under this Act, all fines, fees, levies and dues payable under the rules of the said W.A. Railway Officers' Union by the members thereof may, insofar as they may become owing to the said Union after the commencement of this section, be sued for and recovered in a Local Court or other Court of summary jurisdiction.

¹ Now Industrial Arbitration Act, 1912-1952.

² Now Trade Unions Act, 1902-1924.