

Western Australia

**Government Railways Act (Senior Officers)
Appeal Regulations**

As at 21 Aug 1959

Version 00-c0-02

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Government Railways Act (Senior Officers) Appeal Regulations

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NOTES

Western Australia

GOVERNMENT RAILWAYS ACT 1904

Government Railways Act (Senior Officers) Appeal Regulations

Western Australian Government Railways Commission

Perth, 22nd December, 1958.

His Excellency the Lieutenant Governor and Administrator in Executive Council, in exercise of the powers conferred by sections 77 and 84 of the *Government Railways Act 1904*, has been pleased to make the regulations set out in the Schedule hereunder.

(Sgd.) T. MARSLAND,
Commissioner of Railways.

1. Citation and commencement

- (1) These regulations may be cited as the *Government Railways Act (Senior Officers) Appeal Regulations*.
- (2) These regulations shall come into force on the day fixed by Proclamation as the day for the coming into operation of the *Government Railways Act Amendment Act (No.2) 1958*.

2. Meaning of “Act”

In these regulations “**Act**” means the *Government Railways Act 1904*, as amended from time to time.

3. Application

These regulations apply in the case of an appeal under section 77 of the Act by a person who is the occupant of an office prescribed under section 73 of the Act as one in respect of which the exercise of any of the powers referred to in that section is subject to the Minister.

4. Notice of appeal

- (1) Notice of every appeal under section 77 of the Act to a Stipendiary Magistrate by a person to whom these regulations apply shall be in writing and shall be addressed to, and lodged with, the Commission within fourteen days of the date of the decision appealed against, and the appeal shall be heard by a Stipendiary Magistrate within thirty days from the date of notice of appeal being so lodged.
- (2) Where the hearing of the appeal is commenced within the period of thirty days the Stipendiary Magistrate may allow any adjournment.

[Regulation 4 amended by Gazette 15 July 1959 p.1878.]

5. Content of notice

Every notice of appeal shall set out the nature of the decision appealed against, the offence alleged to have been committed by the appellant, and the grounds of the appeal.

6. Fixing a hearing

The Commission shall forward the notice of appeal to the Under Secretary for Law, Crown Law Department, Perth, for remission to a Stipendiary Magistrate, who, forthwith upon receipt of the notice, shall fix a time and place for the hearing of the appeal and shall advise the Commission accordingly.

7. Appellant to be notified of hearing

The Commission shall cause notice of the time and place so fixed for the hearing of the appeal to be given to the appellant and, where necessary, shall direct that arrangements be made to allow of the appellant's attendance at the hearing of the appeal; provided however that the appellant shall be entitled to at least fourteen days clear notice of the time and place of the hearing of the appeal.

[Regulation 7 amended by Gazette 15 July 1959 p.1878.]

8. Cost of attendance

The attendance at the hearing of the appeal of the appellant and his witnesses shall, in the first instance, and unless and until the Stipendiary Magistrate otherwise directs, be at the appellant's cost.

9. Attendance of witnesses

- (1) Any employee of the Commission called by the appellant as a witness at the hearing of the appeal shall give at least three days clear written notice thereof to his immediate superior, who shall thereupon arrange leave to the witness for such purpose. The leave so arranged will be without pay, or shall be debited against any leave (other than long service leave) which may be due and accrued to such employee, as he may desire; provided that, where necessary under an award of the Court of Arbitration of Western Australia, the consent of a union which is party to such an award, is given.
- (2) The Commission will issue railway passes to the appellant and, at the written request of the appellant, will issue passes to the appellant's witnesses, where necessary to enable the attendance of the appellant or his witnesses before the Stipendiary Magistrate.
- (3) In the event of an appeal being dismissed the value of such railway passes, at ordinary fares for departmental privilege

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tickets, may, unless the Stipendiary Magistrate otherwise directs, be charged by the Commission against the appellant or, with the concurrence of the users thereof, may be treated as privilege passes under other regulations made under this Act.

10. Allowances for witnesses

- (1) Allowances to witnesses for or in respect of their attendance at the hearing of an appeal under these regulations shall be paid as follows —
 - (a) to witnesses employed by the Commission, at rates equal to the rates of ordinary wages or salary and travelling expenses for the time being in force under other regulations made under the Act;
 - (b) to witnesses not employed by the Commission, expenses equivalent to expenses allowed under the *Local Courts Act 1904*, and its amendments in respect of attendance as a witness at a local court.
- (2) Allowances to witnesses under these regulations are recoverable by the witness from the party by whom, or at whose instance, they were summoned or requested to attend.

11. Procedure

With respect to the procedure on any appeal under these regulations, the following provisions shall apply: —

- (1) The Stipendiary Magistrate may admit evidence taken at any departmental inquiry at which the appellant was present and had an opportunity of hearing the evidence and of giving evidence.
- (2) Evidence of witnesses resident more than twenty miles from the place of the sitting of the Stipendiary Magistrate on the hearing of the appeal may be taken by affidavit.

- (3) The Stipendiary Magistrate may administer an oath to any witness, and the appellant shall be entitled to have the witnesses examined on oath.
- (4) The parties may be represented at the hearing of the appeal —
 - (a) as to the appellant —
 - (i) personally;
 - (ii) by the secretary or his deputy of the industrial union to which the appellant belongs; or
 - (iii) by any employee of the Commission nominated by the appellant; or
 - (iv) by legal practitioner; and
 - (b) as to the Commission, by one of its employees authorised by it in that behalf or, except as provided in this paragraph, by a legal practitioner:

but where the appellant is not represented at the hearing of the appeal by a legal practitioner, the Commission shall not be entitled to be represented at the hearing by a legal practitioner.

- (4a)
 - (a) Where an appellant intends to be represented by a legal practitioner at the hearing of an appeal he shall at least seven clear days before the date set down for the hearing of the appeal by notice in writing advise the Stipendiary Magistrate and the Commission of the fact and state in the notice the name and office address of the legal practitioner.
 - (b) In this subregulation the expression, “**hearing of an appeal**” includes the adjourned hearing of an appeal which has been commenced within the period referred to in regulation four of these regulations and adjourned before any evidence is called or admitted on the appeal and without any

date being fixed for the commencement of the adjourned hearing of the appeal.

- (5) Subject to these regulations the Stipendiary Magistrate may regulate his own procedure on, or in relation to, any appeal and issue summonses for the attendance of witnesses, and shall have power to compel any witness to attend and to give evidence.
- (6) Any person who does not appear pursuant to such summons (the same having been personally served upon him, or sent by registered post as a letter addressed to him at his place of abode, and his reasonable travelling expenses according to the prescribed scale having been paid or tendered to him) and does not assign some reasonable excuse for not so appearing, or who appears and refuses to be sworn, or examined, or to produce for the inspection of the Stipendiary Magistrate, any document which by such summons he is required to produce, shall be liable, on summary conviction, to a penalty not exceeding ten pounds.

[Regulation 11 amended by Gazette 15 July 1959 p.1878; Erratum in Gazette 21 August 1959 p.2199.]

12. Determination of appeal

- (1) The Stipendiary Magistrate may confirm, modify or reverse any decision appealed against, or make such other order thereon as he shall think fit, and the decision of the Stipendiary Magistrate shall be final.
- (2) The Stipendiary Magistrate may fix the costs on any appeal and direct by whom, and in what proportions, they shall be payable, and in every case costs shall be awarded against an appellant whose appeal is considered frivolous.
- (3) All costs awarded against an appellant shall be recoverable as a debt due to the Crown.

- (4) All costs awarded to an appellant shall be payable by the Commission.

Notes

- ^{1.} This is a compilation of the *Government Railways Act (Senior Officers) Appeal Regulations* and includes the amendments referred to in the following Table.

Compilation table

Citation	Gazettal	Commencement
<i>Government Railways Act (Senior Officers) Appeal Regulations</i>	23 Dec 1958 pp.3366-8	24 Dec 1958
	15 Jul 1959 p.1878	
Erratum	21 Aug 1959 p.2199	
