

THE RAILWAY SERVICE APPEAL BOARD ACT, 1917.

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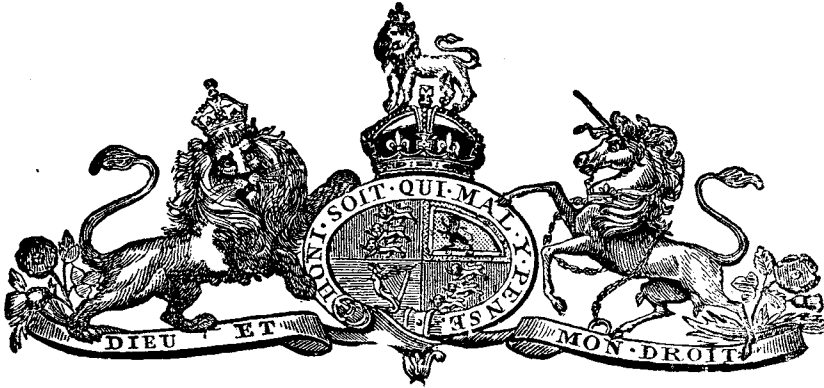
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T A S M A N I A.



1917.

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GEORGI V. REGIS.

No. 48.



AN ACT to establish an Appeal Board for the ^{A.D.} 1917.
Railway Service, and for other purposes.
[8 February, 1917.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

PART I.

PRELIMINARY.

1 This Act may be cited as “The Railway Service Appeal Board Act, 1917,” and shall apply to all State Railways in the State of Tasmania. Short title.

2 The power of the Commissioner to make regulations “for the hearing and determining of any appeal by any employee,” contained in paragraph VIII. of Section Thirty-eight of “The Railway Management Act, 1910,” is hereby repealed, so far as relates to any appeal mentioned in Section Five of this Act. Repeal. 1 Geo. V. No. 69.

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Division of Act.
S.A., No. 829,
1903, s. 4.**3** This Act is divided into parts, as follows :—

- Part I.—Preliminary.
- Part II.—Powers of Officers.
- Part III.—Constitution of Appeal Board.
- Part IV.—Powers and Duties of Board.
- Part V.—Regulations.

Interpretation.
Ibid., s. 5.**4** In this Act, unless the context otherwise determines—

- “Commissioner” means The Commissioner for Railways for the time being, and includes an Acting-Commissioner :
- “Each Branch of the Railway Service” has the same meaning and construction as applicable to the expression where used in “The Railway Management Act, 1910,” and every amendment thereof :
- “Section” means section of this Act :
- “This Act” includes regulations made under this Act :
- “The Board” means the Railway Service Appeal Board constituted under this Act :

1 Geo. V. No. 69.

PART II.

POWERS OF OFFICERS.

Powers of officers
at the head of
branches of the
railway service.
Ibid., s. 7.
N.Z., No. 35 of
1894, s. 10.**5**—(1) Notwithstanding the provisions of any Act, by-law, or regulations to the contrary, the officer at the head of each branch of the Railway Service shall have the power with respect to any employee in his branch who has been guilty of misconduct, or of breaking any rule, by-law, or regulation of the Railway Service—

- i. To caution, admonish or censure him :
- ii. To suspend him :

Employee to have
right of appeal.

But every such employee shall, subject to the provisions hereinafter contained, have the right of appeal to the Commissioner in the First instance, and if not satisfied with his decision, then to the Board as hereinafter provided.

(2) The Commissioner also, shall have power with respect to any employee or officer of the Railway Service who has been guilty of misconduct, or of breaking any rule, by-law, or regulation of the Railway Service—

- i. To caution, admonish, or censure him :
- ii. To suspend or dismiss him :
- iii. To fine him in a sum not exceeding Five Pounds, to be deducted from his pay :
- iv. To reduce him in rank, position, grade, or pay :

But every such employee or officer shall have the right of appeal to the Board.

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6 The Commissioner shall first hear all appeals from employees from any decision of any officer at the head of a branch of the Railway Service, and may confirm or modify any decision of such officer.

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Commissioner
may hear or
determine.

S.A., s. 8.

N.Z., s. 7.

7 In the month of July in each year the Commissioner, or other responsible officer in the Railway Service, shall cause to be published in the "Gazette" a list of the railway branches in the Railway Service, and the names of the officers respectively having the charge or control of each such branch.

List of branches
to be published.
S.A., s. 10.

PART III.

CONSTITUTION OF APPEAL BOARD.

8 For the purposes of this Act a Board is hereby constituted, to be called "The Railway Service Appeal Board."

Constitution of
Board.

N.Z., s. 6.

S.A., s. 11.

9—(1) The Board shall consist of the following members:—

Appeal Board

Cf. 5 Geo. V.

No. 24, s. 30 (Q.)

- i. A police magistrate who shall be nominated and appointed from time to time by the Governor :
- ii. Five employees (hereinafter called respectively "the employees' representatives") who shall be elected : and
- iii. The persons holding for the time being, the offices of Chief Engineer for Existing Lines, Chief Mechanical Engineer, and Traffic Manager.

(2) The Board when sitting for the purposes of any appeal shall be composed of the police magistrate aforesaid, One of the aforesaid officers who is not the head of the branch in which the appellant is actually employed—such officer to be selected by the Commissioner—and the employees' representative who is employed in the branch in which the appellant is actually employed, or to which he is deemed to be attached, and for this purpose : -

- i. An employee in the Stores Branch shall be deemed to be attached to the Traffic Branch :
- ii. An employee in the Telegraph Branch shall be deemed to be attached to the Maintenance Branch : and
- iii. The "Running Staff" and "Locomotive, Carriage and Wagon Staff" of the Locomotive Branch shall be deemed to be separate branches : and
- iv. The "Clerical Staff (generally)" shall be deemed to be a branch, and all Station Masters and Relieving Officers shall be deemed to be attached to that branch instead of to the Traffic Branch.

(3) The five employees' representatives shall be elected respectively by ballot in the prescribed manner by the respective employees in, or deemed to be attached as aforesaid, to the Maintenance Branch, the Locomotive Branch (Running Staff), the Locomotive Branch (Locomotive, Carriage, and Wagon Staff), the Traffic Branch, and the "Clerical Staff (generally)" Branch.

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Each employee shall have only One vote. If Two or more employees in any branch obtain an equal number of votes, the matter shall be decided as between them by lot.

The name of each employees' representative shall be submitted to the Governor for approval; and when so approved he shall hold office subject to the provisions of Section Eleven of this Act, if he remains in the service.

Police magistrate to be chairman.

(4) The police magistrate appointed as aforesaid, shall be chairman at any meeting of the Board at which he is present. In his absence the Governor shall appoint another police magistrate to act, and he shall be such chairman and have all his powers and perform all his duties during such absence.

Secretary.

10 The Governor may from time to time appoint an employee in the Railway Service to be secretary to the Board.

When elected members retire. Cf. S.A., s. 14.

11 Subject to the provisions hereinafter contained, the elected member of the Board shall retire on the Thirty-first day of December, One thousand nine hundred and nineteen, and on a like date at the expiration of every Three years thereafter.

Case of absence, &c., of member of Board. Cf. *ibid.*, s. 32 (Q.).

12—(1) In the event of a member of the Board, who is the employees' representative for any branch of the service, being unable through illness, or temporary disability, to sit on the hearing of any appeal, the Governor shall appoint some other qualified person from the same branch to sit as the deputy of such member of the Board.

Provided that, where possible, such deputy shall be the employee who at the ballot received the next greatest number of votes.

(2) In the event of none of the officers mentioned in paragraph III. of Subsection (1) of Section Nine of this Act, being available to sit on the hearing of any appeal, the Commissioner shall appoint some other qualified officer of the service who is not in the branch in which the appellant is actually employed, to sit as a deputy member of the Board.

(3) Every such deputy shall, for the time during which he acts as deputy, have all the powers and perform all the duties of a member of the Board.

Governor may appoint a provisional board. *Ibid.*, s. 16. (S.A.).

13 The Governor may appoint a provisional Board to hold office until the appointment and election of the Board.

Extraordinary vacancies. *Ibid.*, s. 17. (S.A.).

14 If any member of the Board shall die or be absent without reasonable excuse from Three consecutive meetings of the Board, or become physically or mentally incapable of acting on the Board, or go to reside abroad, or resign, or desire to be discharged from the Board, or be guilty of misconduct, or leave or be dismissed or discharged from the Railway Service, the Governor shall declare his office vacant; and the Governor shall appoint some other person qualified as aforesaid, to fill such vacancy: Provided that where possible the successor to the employees' representative for any branch

Cf. *ibid.*, s. 31. (Q.).

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of the service shall be the employee who at the ballot received the next greatest number of votes. A.D. 1917.

The member so appointed shall, subject to this section, hold office for the unexpired portion of the term of office of the member in whose place he is appointed.

15 Every ballot shall be taken in the manner prescribed by regulations, and if any question or dispute arises as to the regularity or validity of any ballot, or the voting thereat, such question or dispute shall be determined by the Minister for Railways, in such manner as he thinks fit, and his decision shall be final. Minister to settle questions arising as to ballots.

PART IV.

POWERS AND DUTIES OF BOARD.

16 The Board shall investigate every appeal to the Board under this Act made by an officer or employee, and may confirm, alter, or modify any decision appealed against, or may suspend such officer or employee, or, if he has already been suspended, may remove such suspension, allowing him, if the Board thinks fit, his salary or pay during the whole or such part of the period of suspension as the Board may determine, or may further suspend him for any period not exceeding Six months without pay, or may inflict a fine to be deducted from his pay, or may dismiss him or may reinstate any such officer or employee who may have been dismissed, or may make such other order as they think fit. Powers of Board. Cf. *ibid.*, s. 30 (10), (Q.).

17 Every appeal to the Board shall be in writing and shall be lodged with the Secretary or with some officer appointed for that purpose by the Board, within Fourteen days after the date of the decision which is appealed against, and shall be heard within Thirty days of the appeal being lodged. Mode of appeal. *Ibid.*, s. 19 (S.A.). N.Z. s. 7.

18 The appellant in such appeal shall set forth—

- I. A concise statement of his case :
- II. The grounds of the appeal :
- III. The name and address of the appellant.

Case to be stated. *Ibid.*, s. 20 (S.A.).

19 Immediately upon the receipt of a notice of appeal the Secretary shall forward the same to the Chairman, who shall thereupon—

- I. Fix a time and place for hearing the appeal :
- II. Cause notice to be given to the other members of the Board, and the parties directly interested of such date and place of hearing.

Secretary to forward appeal to Chairman. *Ibid.*, s. 21 (S.A.).

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Procedure as to
appeals heard by
the Board.

Certain provisions
of 1 Geo. V.
No. 20 to apply.

Representation of
parties before
Board.
Cf. No. 74 of
1908, s. 63 (c)
(N.Z.).

Order as to
costs of appeal.

20 With respect to the procedure on appeals heard by the Board the following provisions shall apply :—

- i. The Board by or before whom any appeal shall be heard may, on the hearing of any appeal, take evidence in such manner as the Board may deem proper, either on oath or affirmation or otherwise: Provided that if the appellant requests that an oath be administered to any witness present at the hearing such witness shall not be allowed to give evidence except on oath or affirmation:
- ii. The provisions of Division ii. of Part II. of "The Evidence Act, 1910," shall apply in the case of the Board as if the Governor had issued a commission to the persons constituting the Board for the purposes of any appeal, to make an enquiry, and such provisions shall with the necessary alterations, be deemed to be incorporated with this Act:
- iii. No legal practitioner, and no agent, other than an officer or other employee in the Railway Service (not being a legal practitioner), shall appear or be heard on any appeal; but the appellant shall appear in person, or by another officer or employee in the Railway Service and the Railway Department by the Commissioner or some officer of the Railway Service appointed by the Commissioner in that behalf:
- iv. Subject to the provisions of this Act, and the regulations, the Board may regulate its own procedure.

21 With respect to the costs of appeal the following provisions shall apply—

- i. In disposing of an appeal the Board may fix the costs thereof, and direct by whom and in what proportions they shall be payable, and they shall be payable accordingly:
- ii. In no case shall the Board award any further or other costs than in respect of the expenses of witnesses.
- iii. Any costs so ordered to be paid by an appellant—
 - (a) May be deducted by the head officer of the appellant's branch of the Railway Service from any wages or salary due or afterwards becoming due to the appellant: or
 - (b) May be recovered from the appellant as a debt due to the Crown.
- iv. Any costs so ordered to be paid to the appellant may be recovered from the Commissioner in any court of competent jurisdiction as a debt due to the appellant, or by complaint under the Magistrates Summary Procedure Act or any Act or Acts for the time being in force relating to summary proceedings of justices.

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22—(1) All powers of the Board may be exercised by a majority of the members present at any meeting of the Board.

(2) Every decision of the Board shall be final, and shall be given effect to by the Commissioner or other controlling or responsible officer of the Tasmanian Government Railways.

23 The Commissioner shall, when required in writing by the Chairman or Secretary of the Board, either by himself or some accredited officer, produce all books, papers, writings, and documents in his possession or control having reference to or connected with any matter in issue in any appeal.

24 In no case shall any person who has been dismissed for peculation or drunkenness be again appointed on the permanent staff of the Railway Service of the State.

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Majority of members may exercise powers.

Every decision of Board to be final.

Ibid., s. 24 (S.A.).

Commissioner to produce books, &c.

Ibid., s. 25 (S.A.).

Dismissal for peculation or drunkenness.

PART V.

REGULATIONS.

25 The Governor may make regulations—

- I. For the conduct of the elections of the persons required to be elected under this Act :
- II. For the conduct of appeals made to the Commissioner, under this Act, and for giving effect to any decisions thereunder :
- III. For regulating the procedure of the Board concerning appeals to the Board, the conduct of such appeals, and the method of taking evidence thereat and at a distance and for giving effect to any decision of the Board thereunder :
- IV. For regulating generally the mode, manner, and time of election of the elective member of the Board, and generally for the management and conduct of any such election, and providing facilities to the officers and employees of the Railway Service for voting at elections required by this Act :
- V. For the attendance of the elected persons at any sittings of the Board to which they may be elected :
- VI. For prescribing the allowances to witnesses for their expenses :
- VII. For prescribing, where there is no provision in this Act, or no sufficient provision in respect of any matter or thing necessary to give effect to this Act, in what manner and form the want of provision or insufficient provision shall be supplied.

Governor may make regulations. Cf. *ibid.*, s. 26. (S.A.).

