

Hon. Mr. Semple

GOVERNMENT RAILWAYS AMENDMENT

ANALYSIS

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A BILL INTITULED

AN ACT to amend the Government Railways Act, 1926. **Title.**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Government Railways Amendment Act, 1944, and shall be read together with and deemed part of the Government Railways Act, 1926 (hereinafter referred to as the principal Act). **Short Title.**

See Reprint of Statutes, Vol. VII, p. 812

Interpretation.

2. For the purposes of this Act and the principal Act, unless the context otherwise requires,—

“Administrative officer” means a person holding a position in the Department to which is attached an annual salary in excess of seven hundred and sixty-five pounds: 5

“Employee” means any person employed in the service of the Department, whether as a member or as an apprentice or on probation or temporarily: 10

“Principal order” means an order made by the Tribunal under section *seven* of this Act:

“Service organization” means any one of the following organizations—namely, the Amalgamated Society of Railway Servants, the Engine-drivers, Firemen, and Cleaners’ Association, the New Zealand Railway Officers’ Institute (Incorporated), and the New Zealand Railway Tradesmen’s Association: 15

“Tribunal” means the Government Railways Industrial Tribunal established under this Act. 20

Government
Railways
Industrial
Tribunal
established.

3. (1) There is hereby established a Tribunal to be known as the Government Railways Industrial Tribunal.

(2) The Tribunal shall consist of three persons (not being employees of the Department or of any service organization) who shall be appointed by the Governor-General in Council on the recommendation of the Minister, and of whom— 25

(a) One shall be appointed on the joint nomination of the service organizations or, in default of a joint nomination, shall be selected by the Minister after consultation with each of the service organizations: 30

(b) One shall be appointed to represent the Minister:

(c) One, to be the Chairman of the Tribunal, shall be agreed upon by the Minister and the service organizations, or, in default of agreement, shall be selected by the Minister. 35

(3) Except as provided in the *next succeeding* subsection, every member of the Tribunal shall be appointed for a term of three years, but may from time to time be reappointed, or may be at any time removed from office by the Governor-General in Council for disability, insolvency, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister. 40 45

(4) If any member of the Tribunal dies, is removed from office, or resigns, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.

(5) Unless he sooner vacates his office as provided in the *last preceding* subsection, every member of the Tribunal shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

(6) The powers of the Tribunal shall not be affected by any vacancy in the membership of the Tribunal.

4. In the event of the incapacity of the Chairman or any other member of the Tribunal by reason of illness or absence or any other cause the Governor-General in Council may, in the manner in which the original appointment was made, appoint some other person (not being an employee of the Department or of any service organization) to act in the place of the Chairman or other member. Every person so appointed shall while the incapacity continues be deemed for all purposes to be the Chairman or other member of the Tribunal, as the case may be.

Deputies of Chairman or members of Tribunal.

5. (1) For the purpose of carrying out its functions under this Act, the Tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act, 1908, and, subject to the provisions of this Act and of any rules or regulations made under this Act, all the provisions of that Act shall apply accordingly.

Tribunal to be a Commission of Inquiry. See Reprint of Statutes, Vol. I, p. 1036

(2) The Chairman of the Tribunal, or any other member or the Secretary of the Tribunal, purporting to act by direction or with the authority of the Chairman, may issue summonses requiring the attendance of witnesses before the Tribunal, or the production of documents, or may do any other act preliminary or incidental to the hearing of any application or other matter by the Tribunal.

6. (1) The Tribunal shall have the following functions in relation to the remuneration and conditions of service of employees of the Department (other than administrative officers), that is to say:—

Functions of Tribunal.

(a) To make principal orders and other orders as hereinafter provided:

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(b) To make recommendations to the Minister, upon application made as hereinafter provided, in respect of any matters for which regulations can be made under section *twenty-three* of this Act. 5

(2) In exercising its powers and functions under this Act the Tribunal shall have regard to the necessity for promoting the efficiency of the Department.

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(3) Where at any time while the Economic Stabilization Emergency Regulations 1942 continue in force 10 any principal order is made or amended by the Tribunal, no variation shall be made in any rates of remuneration or principal conditions of employment for the time being applying, except such variations as the Tribunal thinks fit, having regard to the general purpose of those 15 regulations, being—

(a) Variations that the Court of Arbitration would not for the time being have been precluded by those regulations from making if the rates of remuneration and conditions of employment 20 had been prescribed by an award made under the Industrial Conciliation and Arbitration Act, 1925; or

See Reprint
of Statutes,
Vol. III,
p. 939

(b) Variations that have been approved by the Economic Stabilization Commission before 25 they are made.

(4) Every general order increasing or reducing rates of remuneration that is made by the Court of Arbitration under regulation forty-two of the Economic Stabilization Emergency Regulations 1942 shall apply 30 with respect to the rates of remuneration of all employees of the Department (other than administrative officers).

Principal orders
as to pay and
conditions of
service.

7. (1) Subject to the provisions of this Act, the Tribunal may from time to time, in respect of employees 35 of the Department (other than administrative officers), make principal orders not inconsistent with the principal Act or any other enactment for all or any of the following purposes:—

(a) Prescribing scales of salaries for grades in the 40 First Division and for any subdivisions of the grades; and classifying the Second Division and prescribing rates of wages for the respective classes and for any subdivisions of the classes: 45

- 5 (b) Prescribing ordinary hours of work and the period to be worked before overtime rates become payable; and prescribing rates of remuneration and conditions in respect of minimum earnings, overtime, standing-time, night-work, and special duty, and in respect of work on Sundays and holidays:
- 10 (c) Providing for intervals between shifts and for intervals for meals:
- 10 (d) Prescribing minimum rates of pay for adult employees and for married employees:
- 15 (e) Prescribing the terms and conditions on which leave of absence, free travelling on the railways or travelling at reduced rates, and relieving, travelling, lodging, night, transfer, and meal allowances and expenses may be granted:
- 20 (f) Prescribing allowances in the nature of additional pay for classes or conditions of work warranting the payment thereof.

(2) Every principal order shall continue in force until it is revoked by a subsequent principal order.

- 25 (3) No principal order shall be revoked until it has been in force for at least one year. For the purposes of this subsection a principal order shall be deemed to come into force on the earliest date on which any provision of the order comes into force.

30 8. Subject to the provisions of this Act, the Tribunal may from time to time during the currency of any principal order make orders for all or any of the following purposes:—

Power to amend principal orders.

- 35 (a) To amend the provisions of the principal order for the purpose of remedying any defect therein or giving fuller effect thereto:
- (b) To amend the provisions of the principal order for such purpose and in such manner as the Tribunal is satisfied that all the parties to the application for the principal order have agreed upon.

40 9. (1) Any service organization or the General Manager may at any time apply in writing to the Tribunal for a principal order or other order or for a recommendation in accordance with the provisions of this Act.

Application for order or recommendation to be made to Tribunal and served on respondent.

(2) An application under this section shall be deemed to be made on the day on which it is lodged with the Tribunal.

(3) No application for a principal order to replace an existing principal order shall be made until the existing order has been in force for at least ten months. 5

(4) An application under this section may be made jointly by the Amalgamated Society of Railway Servants and the New Zealand Railway Tradesmen's Association.

(5) In the case of any application made by any service organization or in the case of a joint application as aforesaid, the General Manager shall be the respondent. 10

(6) In the case of any application made by the General Manager, every service organization in respect of whose members or any of them an order or recommendation is applied for shall be a respondent. 15

(7) Every application under this section shall name the applicant or applicants and the respondent or respondents, and shall contain a detailed statement of the claims made by the applicant or applicants. 20

(8) A copy of every application shall, as soon as it is made, be sent by the applicant to the respondent or to each respondent if there are two or more, and also to every service organization that is neither an applicant nor a respondent. 25

Statement by respondent.

10. (1) At any time within one month after a copy of any application is sent to any respondent under the *last preceding* section or within such further time as the Tribunal may in any case allow, the respondent may lodge with the Tribunal a statement in detail admitting such of the claims in the application as he desires to admit, or making a counter-proposal with respect to all or any of the claims in the application. 30

(2) A copy of every such statement shall at the same time be sent by the respondent to the applicant or to each applicant if there are two or more, and also to every service organization that is neither an applicant nor a respondent. 35

Amendment of applications and statements.

11. Subject to the provisions of any rules or regulations made under this Act, the person making any application or statement under this Act may amend it at any time before the final determination of the application by the Tribunal. 40

12. Where all the parties to any application for a principal order or other order agree in writing upon all or any of the terms to be incorporated in the order, the Tribunal may, if it thinks fit, in making its order, incorporate in the order all or any of the terms so agreed upon, without making inquiry into the matters to which those terms relate, except so far as may be necessary to ensure that the order is in accordance with this Act.

Orders by consent.

10 13. (1) At any time after the respondent's statement in reply to any application has been lodged with the Tribunal or after the expiration of the time allowed for lodging the respondent's statement, the Tribunal shall appoint a day and place for the hearing of the application, and shall notify the applicant and the respondent and also every service organization that is neither an applicant nor a respondent of the day and place so appointed.

Hearing and adjournments.

(2) Except with the consent of the respondent, the day so appointed shall not be earlier than one month after the making of the application.

(3) The Tribunal may adjourn the hearing of any application from time to time and from place to place.

15 14. (1) For the purposes of the hearing of any application the applicant may appoint one assessor and the respondent, or the respondents jointly if there are two or more, may appoint one assessor:

Assessors.

30 Provided that where the Amalgamated Society of Railway Servants and the New Zealand Railway Tradesmen's Association are joint applicants or are both respondents, the applicants or respondents, as the case may be, may appoint two assessors and the General Manager may appoint two assessors.

35 (2) No person shall be qualified to be appointed to be an assessor unless he is a member of the Department or the General Secretary or an Assistant General Secretary of a service organization.

40 (3) The assessors appointed in respect of any application shall be entitled to be present at and to take part in the hearing and determination of that application as if they were members of the Tribunal, but they shall not be entitled to vote and shall not be parties to any decision of the Tribunal:

45 Provided that the members of the Tribunal other than the assessors may at any time deliberate in private as to the Tribunal's decision on the application or as to any question arising in the course of the proceedings.

- (4) The Tribunal's powers in relation to any application shall not be affected by any failure to appoint an assessor or by the absence of any assessor.
- Advocates.** 15. At the hearing by the Tribunal of any application the applicant and the respondent and, with the leave of the Tribunal, any service organization that is neither an applicant nor a respondent may be represented by an advocate or advocates. No person shall be an advocate unless he is a member of the Department or the General Secretary or an Assistant General Secretary of a service organization. 5 10
- Rules of procedure.** 16. (1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal may from time to time make rules for regulating its procedure. 15
- (2) Subject to the provisions of this Act and of any rules or regulations made under this Act, the Tribunal may regulate its procedure in such manner as it thinks fit.
- Quorum and decision of Tribunal.** 17. (1) The presence of the Chairman and of at least one other member shall be necessary to constitute a sitting of the Tribunal. 20
- (2) The decision of a majority of the members present at a sitting of the Tribunal shall be the decision of the Tribunal. If the members present are equally divided in opinion, the decision of the Chairman shall be the decision of the Tribunal. 25
- (3) Every order made by the Tribunal shall be signed by the Chairman and at least one other member of the Tribunal. 30
- Effect of orders.** 18. (1) Every order made by the Tribunal in accordance with this Act shall be binding on the Crown and on every employee whom the order purports to affect, whether or not any such employee is a member of any service organization. 35
- (2) Any order or provision of an order may be made by the Tribunal so as to come into force on a day to be specified in that behalf in the order, being either before or after the date of the order but not earlier in any case than the date of the making of the application for the order and, in the case of a principal order replacing an existing principal order, not earlier than one year after the date of the coming into force of the existing order. 40

(3) Every order or provision of an order in respect of which no date is specified as aforesaid shall come into force on the day after the date of the order.

19. Proceedings before the Tribunal shall not be held bad for want of form. No appeal shall lie from any order of the Tribunal, and, except upon the ground of lack of jurisdiction, no proceeding or order as aforesaid shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

Proceedings before Tribunal not to be questioned or appealed against.

20. (1) No person shall in any manner attempt to influence the Tribunal or any member of the Tribunal in respect of any matter within the functions of the Tribunal.

Attempts to influence improperly the decisions of the Tribunal.

(2) Nothing in this section shall be so construed as to prohibit any person from giving information or advice or making representations with respect to any such matter at the request or invitation of the Tribunal, or as an assessor, or as an advocate or witness before the Tribunal.

(3) Every person who commits a breach of any of the provisions of this section commits an offence, and shall be liable on summary conviction to a fine not exceeding *fifty* pounds.

21. There shall be paid out of moneys appropriated by Parliament for the purpose to the members of the Tribunal and to assessors appointed under this Act such remuneration by way of salary, fees, or allowances and such travelling expenses and allowances as may from time to time be prescribed by regulations made under this Act.

Remuneration and travelling-allowances.

22. (1) Without limiting the functions of the General Manager with respect to appointments under section five of the Government Railways Amendment Act, 1927, it is hereby declared that the General Manager, once in each year, shall determine, in the case of every member who in his opinion is within range of promotion in the usual course to any position, whether or not he is suitable for appointment to that position.

Annual determinations as to suitability for promotion, and appeals therefrom.

(2) Every determination under this section in respect of any such member shall be notified to the member in such manner as the General Manager thinks fit.

See Reprint of Statutes, Vol. VII, p. 876

(3) Any such member who is dissatisfied with any determination made with respect to himself under this section may appeal therefrom to the Appeal Board.

(4) In making any determination or considering any appeal under this section in respect of any such member, the General Manager or the Appeal Board, as the case may be, shall be bound by the considerations referred to in subsections four, five, and six of section five of the Government Railways Amendment Act, 1927, so far as they are applicable and with the necessary modifications. 5 10

(5) In any case where any member has appealed against any determination under this section in respect of his suitability for appointment to any position and, before his appeal is disposed of, duly lodges an appeal against the appointment of another member to that position, the first appeal, so far as it relates to that position, shall be deemed to be merged with the appeal against the appointment. 15

Commencement. (6) This section shall come into force on the first day of January, nineteen hundred and forty-five. 20

Regulations. **23.** (1) The Governor-General may from time to time, by Order in Council, make regulations not inconsistent with the principal Act or this Act for all or any of the following matters:— 25

(a) Determining the manner in which and the terms and conditions on which candidates for employment in the Department may enter the service thereof:

(b) Prescribing the respective duties to be performed by members, and the discipline to be generally observed in the performance of those duties: 30

(c) Determining the grounds upon which and the mode in which members may be promoted in the same Division or from one Division to the other, and the nature or character and extent of qualifications, examinations, or tests which members shall possess or undergo for the purposes of promotion: 35 40

(d) Providing for the conduct of elections of the Appeal Board, and for facilities to be given to members for voting thereat, and to the elected persons for attending the sittings of the Appeal Board: 45

- (e) Regulating the procedure of the Appeal Board, and the conduct of appeals, including the method of taking evidence at a distance:
- 5 (f) Providing how and by whom charges of inefficiency or misconduct may be made against any member:
- (g) Enabling the General Manager or any person authorized by him either generally or specially to hold an inquiry into charges or allegations of inefficiency or misconduct or into any matter arising out of or connected with the administration of the principal Act:
- 10 (h) Providing for the temporary employment of persons in the Department, and for any matters in relation thereto:
- 15 (i) Prescribing conditions of service for administrative officers:
- (j) Enabling the General Manager or any person authorized by him either generally or specially to grant special or emergency leave of absence, or free travelling on the railways or travelling at reduced rates, or any other privileges, or any allowances:
- 20 (k) Fixing the ages at which members shall retire in the different branches of the Department:
- 25 (l) Prescribing penalties for breaches of the regulations:
- (m) Prescribing the rent to be paid for house or other accommodation provided by the Department and used or occupied by employees for domestic purposes:
- 30 (n) Generally providing for any other matters that by the principal Act or this Act are expressed to be prescribed or that may be deemed necessary in order to give full effect to the principal Act or this Act.
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(2) Regulations made under this section shall come into force on a date to be specified therein in that behalf (whether before or after the date of the Order in Council making the regulations) and if no such date is specified shall come into force on the date of publication in the *Gazette* of a notification of the making of the regulations.

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(3) No regulation made under this section shall be deemed to be invalid on the ground that it delegates to or confers on any person or body any discretionary authority.

Repeal.

(4) This section is in substitution for section eighty-nine of the principal Act, and that section is hereby accordingly repealed. 5

(5) All regulations that originated under the said section eighty-nine of the principal Act or under the corresponding provisions of any former Act and are in force on the commencement of this Act shall enure for the purposes of the principal Act as if they had originated under this section, and accordingly shall, where necessary, be deemed to have so originated: 10

Provided that in so far as any such regulations relate to matters in respect of which any principal order made by the Tribunal under this Act is for the time being in force, the regulations shall be read subject to the provisions of the principal order. 15

Consequential
repeals and
amendments.

24. (1) The following enactments are hereby repealed, that is to say:— 20

(a) Section seventy-five, subsection two of section seventy, and paragraphs (b) and (c) of section seventy-four of the principal Act:

1936, No. 2

(b) Section fourteen of the Government Railways Amendment Act, 1936: 25

1938, No. 20

(c) Section twenty-one of the Statutes Amendment Act, 1938.

(2) Section seventy of the principal Act is hereby amended by omitting from subsection one the words “as set forth in regulations made under section eighty-nine hereof” 30

(3) Section seventy-six of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraphs:— 35

“(c) Reduction in status; or

“(cc) Reduction in pay; or”.