

BECHUANALAND PROTECTORATE.

NO. 36 OF 1949.

(Promulgated 30th September, 1949.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER

Entitled the Railway Proclamation, 1949.

Whereas the Rhodesia Railways Limited, a joint stock company incorporated in the United Kingdom, owns, operates and maintains railways in Southern Rhodesia, Northern Rhodesia, the Bechuanaland Protectorate and the Union of South Africa;

And whereas the Government of Southern Rhodesia is the owner of all the shares in the said Rhodesia Railways Limited;

And whereas the Governments of Southern Rhodesia, Northern Rhodesia and the Bechuanaland Protectorate are desirous of having the undertakings which are now owned and operated by the Rhodesia Railways Limited transferred to, operated and maintained by a statutory body established under the laws of Southern Rhodesia and operating under the laws of their three territories;

And whereas provision has been made under the Rhodesia Railways Act, 1949, of Southern Rhodesia for the establishment and incorporation of a body to be known as the Rhodesia Railways;

And whereas it is desired to authorise the Rhodesia Railways to operate in the Bechuanaland Protectorate;

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

PRELIMINARY.

1. This Proclamation may be cited as the Railway Proclamation, 1949, and shall not come into operation unless and until the High Commissioner has declared by notice in the *Gazette* that it is His Majesty's pleasure not to disallow the same; thereafter it shall come into operation on such date as the High Commissioner after consultation with the Governor of Southern Rhodesia and the Governor of Northern Rhodesia shall by notice in the *Gazette* declare.

Short title
and com-
mencement.

See HCN
209/49

Interpre-
tation
of terms.

2. In this Proclamation, unless inconsistent with the context—

“appointed day” means the day appointed by the Governor of Southern Rhodesia in terms of section *seven* of the Rhodesia Railways Act, 1949, of Southern Rhodesia, on which day the agreement between the Railways, the Company and the Government of Southern Rhodesia becomes effective;

Proc. 63/55.

“Authority” means the Rhodesia Railways Higher Authority as appointed ^{and} ~~constituted from time to time under sub-sections (1) and (2) of section eight~~ of the Rhodesia Railways Act, 1949, of Southern Rhodesia;

“Board” means the Rhodesia Railways Board as appointed and constituted from time to time and working and holding office in accordance with the provisions of sections *ten, eleven and twelve* of the Rhodesia Railways Act, 1949, of Southern Rhodesia;

“Federation” means the Federation of Rhodesia and Nyasaland Proc. 63/55

“Company” means the Rhodesia Railways Limited aforesaid;

“General Manager” means the General Manager of the Railways appointed under section *sixteen* of the Rhodesia Railways Act, 1949, of Southern Rhodesia and holding office within the Territory on the same conditions as are provided in that section;

“goods” includes animals and vehicles and all things capable of being carried on a railway;

Proc. 63/55.

~~“Governments” means the Governments of Southern Rhodesia, Northern Rhodesia and the Bechuanaland Protectorate;~~

“Railways” means the Rhodesia Railways established and incorporated under the Rhodesia Railways Act, 1949, of Southern Rhodesia;

“territories” means collectively the Colony of Southern Rhodesia, the Territory of Northern Rhodesia and the Bechuanaland Protectorate.

THE RHODESIA RAILWAYS.

Rhodesia
Railways to
be a body
corporate.

3. As from the commencement of this Proclamation the Railways shall be capable in law of suing and being sued in its corporate name and of purchasing or otherwise acquiring, holding and alienating property movable or immovable.

General
duties of the
Railways.

4. It shall be the general duty of the Railways so to exercise their powers under this Proclamation as to provide, or to secure and promote the provision of, an efficient and adequate system of public transport of goods and passengers by rail within and for the Territory with due regard to

economy and safety of operation, and for that purpose it shall be the duty of the Railways to take such steps as they consider necessary for extending and improving the existing and future rail transport facilities within and for the Territory. The Railways shall administer their undertakings on business principles and with due regard to the needs of the public and the development of agriculture, commerce, industry and mining within the Territory by means of cheap and efficient transport.

5. (1) The Railways shall have power, subject as hereinafter provided, to do anything which is calculated to facilitate the discharge of their duties under section *four* of this Proclamation or which is incidental or conducive thereto, including in particular, but without prejudice to the generality of this provision, power to carry on business as public or common carriers and to carry goods and passengers by rail, road, air and inland waterways within the Territory and to carry on all such ancillary business as can suitably be carried on in conjunction with the business of transport.

Powers
of the
Railway .

(2) Subject to the provisions of this Proclamation, the powers conferred by sub-section (1) of this section include power—

- (a) to acquire the whole undertaking of the Company and all and several the property of the Company within the Territory whether movable or immovable, real or personal, and to undertake to pay, satisfy and discharge all the debts, liabilities and obligations of the Company, and to adopt, perform and fulfil all contracts and engagements now binding on the Company;
- (b) to construct or acquire any railways or tramways which may seem capable of being worked or used in connexion with any of their lines for the time being, or calculated directly or indirectly to benefit them and to acquire rights over or in connexion with any such railways or tramways or any branch or subsidiary lines;
- (c) to carry on and expand the road transport business of the Company by themselves and to engage in any service of road transport business either by themselves or in co-operation with any person or company by way of partnership, shareholding or the like;

- (d) to operate air transport services and for that purpose to acquire aircraft, parts of aircraft and aircraft equipment and accessories;
- (e) to operate transport services by inland waterways;
- (f) to consign goods on behalf of other persons from any place in the Territory to any other place, whether in the Territory or elsewhere;
- (g) to store goods within the Territory, whether or not those goods have been or are to be carried by the Railways so however that facilities for the storage of goods shall not be provided by the Railways except at places where such facilities are required for the storage of goods carried or to be carried by them;
- (h) to effect the insurance of persons and goods carried on the railways or other undertakings either solely or in co-operation with other insurers;
- (i) in places within the Territory where their passengers or their employees may require them, to provide for their passengers, for their employees and for other persons, hotels, hostels, other living accommodation and places for refreshment and recreation;
- (j) to provide in the Territory such other amenities and facilities for passengers and other persons making use of the services provided by them and for their employees as it may appear to them requisite or expedient to provide;
- (k) to purchase, take on lease or in exchange, hire or otherwise acquire any property, movable or immovable, real or personal in fulfilment of their duties or in connexion with any property for the time being and in particular any land, buildings, easements, servitudes, water rights, mining rights, licences, patents, machinery, ships, barges, rolling stock, vehicles, aircraft, plant, and stock-in-trade and to sell or otherwise dispose of any such property as becomes no longer required for their undertakings;
- (l) to acquire land with forests thereon, to plant and grow trees on any land, to cut and produce timber for their own purposes and requirements and to manufacture, turn to account, market and realise any timber not required for their own purposes;

- (m) to sell land, lay out land for building purposes, to let land, build on or otherwise improve land, advance moneys to their servants to enable them to build or acquire houses whether erected on land belonging to the Railways or other land, and generally to use or otherwise develop land in such manner as may seem expedient to advance the interests of the Railways;
- (n) to lend money to or give guarantees for the benefit of such persons as may be carrying on similar activities as are specified in this section and on such terms as may seem expedient;
- (o) to enter into partnership or into any arrangement for sharing profits, union of interests, joint adventure, reciprocal concession or co-operation with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the Railways are authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the Railways, and to take or otherwise acquire and hold shares or stocks in or securities of, and to subsidise or otherwise assist any such company, and to sell, hold, reissue, with or without guarantee, or otherwise deal with such shares or securities;
- (p) to apply for, purchase or otherwise acquire any patent, concession and the like conferring any right to use any invention capable of being used for any of the purposes of the Railways, and to use, grant licences for the use of, or otherwise turn to account any rights so acquired;
- (q) to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object;
- (r) to acquire by agreement (whether absolutely or for any period) the whole or any part of any undertaking of any other person, being an undertaking, or a part of an undertaking, the activities whereof are wholly or mainly such activities as are specified in sub-section (1) of this section;
- (s) to construct, manufacture, purchase, maintain and repair anything required for the purpose of any of the activities of the Railways specified in sub-section (1) of this section;

- (t) to do anything for the purpose of advancing the skill, knowledge and usefulness of the employees of the Railways or the efficiency of the equipment of the Railways or of the manner in which that equipment is operated, including the provision by the Railways, and the assistance of the provision by others, of facilities for training, education and research and to establish, maintain and support or otherwise assist associations, institutions or conveniences for employees of the Railways or those having dealings with the Railways;
- (u) to enter into and carry out agreements with any person carrying on business as a carrier of passengers or goods inside or outside the Territory providing for the carriage of passengers or goods by or on behalf of the Railways and that other person under one contract or at a through charge or in the same vehicles or containers, whether belonging to the Railways or not;
- (v) to enter into and carry out agreements with any person owning any railway, or carrying on business as a carrier of passengers or goods, in the Territory providing for the operation of any such railway or for the carriage of passengers or goods by or on behalf of the Railways.

(3) The Railways may dispose, whether absolutely or for a term of years, of any part of their undertakings or any property which in their opinion is not required by them for the discharge of their duties under this Proclamation.

(4) For the avoidance of doubt, it is hereby declared that the preceding provisions of this section relate only to the capacity of the Railways as a statutory corporation, and nothing in the said provisions shall be construed as authorising the disregard by the Railways of any law which is in operation in the Territory.

(5) The provisions of this section shall not be construed as limiting any power of the Railways conferred by any subsequent provision of this Proclamation.

ACQUISITION OF COMPANY'S PROPERTY.

Acquisition
of
Company's
Property.

6. (1) On the appointed day all the property of the Company in the Territory shall vest in the Railways, and all public registries in the Territory relating to land, mining rights, water rights and the like shall give effect to this provision and shall not require any act of transfer or conveyance.

(2) Every agreement to which the Company was a party, however expressed and whether in writing or not, and whether or not of such nature that rights and liabilities thereunder could be assigned by the Company, shall have effect as from the appointed day as if—

- (a) the Railways had been a party to the agreement;
- (b) for any reference, express or implied, to the Company there were substituted, as respects anything falling to be done on or after the appointed day, a reference to the Railways;
- (c) any reference, express or implied, to the directors or any director of the Company were, as respects anything falling to be done on or after the appointed day, a reference to the Board or the chairman of the Board, as the case may be;
- (d) any reference, express or implied, to any officer or any servant of the Company were, as respects anything falling to be done on or after the appointed day, a reference to such person as the General Manager may designate, or, in default of such designation, to the officer or servant of the Railways who corresponds as nearly as may be to the first-mentioned officer or servant;
- (e) in the case of an agreement for the rendering of personal services to the Company, the services to which the agreement relates were, on and after the appointed day, any reasonably comparable service under the Railways to be selected by the General Manager or the Board;
- (f) save as provided by the last three preceding paragraphs, any reference, express or implied, to the undertakings of the Company were, as respects the period beginning with the appointed day, a reference to the undertakings of the Railways.

(3) Subject to the provisions of this Proclamation, the Railways shall succeed to all the rights conferred and be subject to all the obligations imposed upon the Company by any law of the Territory and every such law shall, *mutatis mutandis*, apply to the Railways. The provisions of paragraphs (b), (c), (d) and (f) of sub-section (2) of this section shall apply in relation to any such law.

(4) Without prejudice to the generality of the provisions of this section, where, by the operation of any of the said provisions, any right or liability becomes a right or liability of the Railways, the Board and all other persons shall, as from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing that right or liability as the Railways would have had if it had at all times been a right or liability of the Railways, and any legal proceedings or applications to any authority pending on the appointed day by or against the Company in so far as they relate to any property, right or liability transferred to the Railways under this section, or to any agreement, statutory provision or document which has effect in accordance with this section, shall be continued by or against the Railways to the exclusion of the Company.

(5) No transfer duty, stamp duty, fee of office, or other duty, tax or charge payable under any law shall be payable in respect of the transfer of any property or right effected by or in pursuance of the provisions of this section.

THE HIGHER AUTHORITY.

Procedure
of the
Authority.

7. In the performance of the functions of the Authority as regards business relating to the Territory—

- (a) a quorum of the Authority shall be three;
- (b) every document issued by the Authority shall be signed on behalf of the Authority by the secretary of the Authority;
- (c) the Authority may meet together for the despatch of business at such places within the territories and, except where prescribed by this section, may regulate their procedure in such manner as they may deem fit;
- (d) it shall not be necessary for the members of the Authority to meet in order to consider and decide upon every proposal, and any decision put in writing and signed by all the members of the Authority shall have the same force and effect as a resolution passed at any convened meeting of the Authority.

*Repealed by
Act 63/55.*

8. (1) It shall be the function of the Authority— Functions of the Authority.

- (a) to determine the policy of the Railways;
- (b) to give the Board general directions on matters of policy and particular directions on all matters in which, as hereinafter provided in this Proclamation, the Board may not act without the prior consent and approval of the Authority.

(2) The Authority may entertain any representations made either by the Board or by the General Manager with the knowledge of the other and may decide any question at issue between them.

THE BOARD.

9. In the performance of the functions of the Board as regards business relating to the Territory— Procedure of Board.

- (a) the quorum of the Board shall be three;
- (b) at all meetings of the Board the chairman, or in his absence the vice-chairman, shall preside; in the absence of both the chairman and the vice-chairman, the members present may elect one of their number to preside;
- (c) all questions coming or arising before a meeting of the Board shall be decided by a majority of the members present and voting thereon at that meeting of the Board and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote;
- (d) the General Manager shall be entitled to attend all meetings of the Board and to speak but not to vote on any matter under discussion: Provided that the chairman of the Board may require the General Manager to withdraw from any meeting if he considers that the General Manager should not be present during the discussion of any matter;
- (e) if a member of the Board is or becomes the holder of, or tenders for, any contract for the supply of materials to, or the execution of work for the Railways or is or becomes concerned in the management of any company holding or tendering for such a contract as aforesaid, or is interested directly or indirectly in any company or partnership making any application to the Board,

he shall forthwith make full disclosure of the facts to the Board and shall not take part in the consideration or discussion of any question with respect to such contract or such application, or vote thereon;

- (f) subject to the provisions of this section, the Board may make standing orders for the regulation of their proceedings and business and may vary, suspend or revoke any such order.

Functions
and Powers
of Board.

10. (1) It shall be the function of the Board, subject to the provisions of this Proclamation, to conduct and manage the business of the Railways within the Territory in accordance with the policy determined by the Authority.

(2) For the due performance of their function the Board shall, subject to the provisions of sub-section (3) of this section, be entitled to exercise all the powers conferred upon the Railways by this Proclamation.

(3) The Board shall, in the exercise of the powers so conferred, give effect to any direction on matters of policy which may from time to time be given to them by the Authority; in particular the Board shall in the following matters not exercise the powers of the Railways without the prior consent and approval of the Authority:—

- (a) Any important question of railway policy, including any question of an international character requiring an agreement with a Government of a country outside the territories;
- (b) any radical alteration of the rates and fares structure;
- (c) the raising of new capital, ~~whether by direct appeal to the public or by borrowing from the Governments or from any of them;~~
- (d) any construction of a new railway;
- (e) capital expenditure on any one work involving fifty thousand pounds or more; and
- (f) any other matter which the Authority may from time to time direct to be reserved in terms of this sub-section.

2
no. 63/85.

THE GENERAL MANAGER.

Functions
and Powers
of General
Manager.

11. (1) The General Manager shall be the chief executive officer of the Railways for the Territory, and it shall be his function generally to direct the regulation, maintenance and operation of the undertakings of the Railways.

(2) For the due performance of his function as regards the Territory the General Manager shall, subject to the provisions of sub-section (3) of this section, be empowered—

- (a) to expend all moneys which are required for working expenses in accordance with approved budget estimates; this power shall include the power to reappropriate between one abstract and another of the budget estimates of revenue expenditure: Provided that in respect of any one reappropriation the amount so reappropriated shall not exceed ten thousand pounds;
- (b) to carry out all construction work which from time to time may be deemed necessary;
- (c) to take such steps as he may deem necessary or advisable in regard to the construction, equipment and operation of the undertakings of the Railways as will reasonably secure the safety both of members of the public and persons operating such undertakings;
- (d) on behalf of the Railways to sign all necessary documents, to accept service of process and to institute or defend any proceedings in any court; this power shall include the power of substitution;
- (e) to do all such other acts as are necessary for the due performance of his function and as are within the powers conferred upon the Railways by this Proclamation.

(3) In the following matters the General Manager shall not exercise the powers conferred upon him by this Proclamation without the prior consent and approval of the Board:—

- (a) Any matter in which the Board cannot act without the prior consent and approval of the Authority;
- (b) the acceptance of any tender in excess of fifty thousand pounds;
- (c) the sale, disposal or writing off of any property or assets of the Railways of a greater value than six thousand pounds for any one sale, disposal or writing off;
- (d) the entry into any agreement for the working of any other railway belonging to any railway company or administration;
- (e) the entry into any agreement of a continuing nature providing for special rates and fares;

- (f) any general variation of the salaries or wages of the employees of the Railways;
- (g) the appointment to the permanent employment of the Railways in a grade higher than that of district officer of any person who immediately before such appointment has not been in the permanent employment of the Railways;
- (h) any permanent increase in personnel or staff in excess of the provision in the approved budget and involving in any one category or class an expenditure of more than five thousand pounds a year;
- (i) any major revision of pay and allowances;
- (j) promotions and appointments in a permanent capacity of heads of departments;
- (k) in relation to expenditure not wholly chargeable to ordinary working expenses—
 - (i) expenditure on new lines or rolling stock, or surveys not provided in the approved budget for the year or carried forward from the approved budget of a previous year;
 - (ii) expenditure on other works not provided in the approved budget for the year or carried forward from the approved budget of any previous year: Provided that this paragraph shall not apply to any work costing less than six thousand pounds if the total sum provided in the budget for such works is not thereby exceeded;
- (l) expenditure on any item to an excess of more than twenty per centum, or ten thousand pounds in any one case, over the costs entered in capital and depreciation budget estimates.

Inter-com-
munication
between
Authority,
Board and
General
Manager.

12. (1) Both the Board and the General Manager shall give to the Authority all such information relating to the undertakings of the Railways as the Authority may at any time require.

(2) The Board shall have the right of access to the Authority; the General Manager shall be informed of any reference affecting him.

(3) The General Manager shall have the right of access to the Authority in consultation with the chairman, or, in his absence, the vice-chairman of the Board.

(4) The General Manager shall from time to time submit to the Board any proposals, and shall consider any proposals by the Board, for the construction of any new railway.

FINANCE.

13. (1) The cost incurred by the Government of Southern Rhodesia in acquiring the shareholding of the Company, amounting to three million two hundred and eighty-three thousand six hundred and eighty-nine pounds, together with the cost incurred by the said Government in discharging the debenture indebtedness of the Company, in providing further capital prior to the transfer of the undertakings of the Company to the Railways and in raising the loan necessary for the aforementioned purposes, amounting to twenty-six million seven hundred and sixteen thousand three hundred and eleven pounds, shall be deemed to be a debt of thirty million pounds (hereinafter referred to as the loan indebtedness) due by the Railways to the Government of Southern Rhodesia.

(2) The Railways shall pay to the Government of Southern Rhodesia on the loan indebtedness interest reckoned as from the first day of October, 1947. The rate of interest payable shall be the same rate of interest as is from time to time payable by the said Government in its borrowing of thirty-two million pounds under the Specific Loan Act, 1947, of Southern Rhodesia or as is payable by the said Government on any new loan raised to redeem the balance of the original loan.

(3) The Railways shall further pay half-yearly to the Government of Southern Rhodesia the management expenses, composition of stamp duties and other duties and expenses paid by the said Government in respect of the portion of any loan relating to the loan indebtedness.

(4) The Railways shall further pay yearly to the said Government an amount of one per centum on the loan indebtedness as a contribution to the sinking fund which the Government undertook to establish in raising the said loan under the Specific Loan Act, 1947, of Southern Rhodesia. In consideration of this payment the Railways shall be entitled to the eventual credit or benefit of the portion of the sinking fund contributed as aforesaid and fifteen-sixteenths of the interest earned by the investment of the sinking fund. When the aggregate amount of the sinking fund payments made by the Railways to the Government of Southern Rhodesia, together with the interest to be credited to the Railways, in terms of this sub-section, reaches the amount of thirty

million pounds, the debt of the Railways shall be deemed to have been discharged and the said amount of thirty million pounds shall then be transferred to the capital account of the Railways.

(5) The amount of the loan indebtedness to the Government of Southern Rhodesia, together with all interest, sinking fund and other charges due and unpaid thereon shall be a first charge on all the property and assets of the Railways.

13A sec P 57/51

Reserve
Accounts.

14. (1) The amount, if any, which on the appointed day is standing to the credit of the statutory reserve account of the Company established under the Railway Proclamation, 1935, repealed by this Proclamation shall be used by the Railways for providing—

- (a) for the acquisition of further assets to be used in the undertakings of the Railways;
- (b) the nucleus of an improvement or betterment account.

(2) There shall be established a rates and wages stabilisation account into which shall be paid the amount which on the appointed day is standing to the credit of the rates stabilisation account which was established and is being maintained by the Company under the provisions of the Railway Proclamation, 1935, repealed by this Proclamation.

Whenever the amount to the credit of the rates and wages stabilisation account falls below one million and one-half million pounds the Board shall make such provision for the replenishment of the account as the Authority may approve.

(3) The Board shall from time to time cause investigation to be made into the sufficiency or otherwise of the various reserve accounts and funds in the undertakings and, with the approval of the Authority, may take such steps as may be deemed expedient to build up, replenish or vary the reserve accounts or funds and transfer from one of the reserve accounts or funds created or maintained by the provisions referred to in this section and in paragraph (c) of section nineteen of this Proclamation or previously existing in the accounts of the Company under similar or other headings to any other reserve accounts or funds.

(4) Notwithstanding anything in this Proclamation contained, the rates and wages stabilisation account shall in no circumstances be raised to an amount exceeding four million pounds.

Repealed and replaced by sec 17/53

sec 17/53

sec 17/53

sec 17/53

15. The Board may, with the approval of the Authority, borrow money for all or any of the following purposes:—

Borrowing Powers.

- (a) The defraying the cost of any permanent work properly chargeable to capital;
- (b) the provision of working capital;
- (c) ~~the repayment of loans;~~
- (d) the purchase, otherwise than simply by way of investment, of any securities or shareholding of any body corporate which is carrying on or about to carry on or which directly or indirectly controls another body corporate which is carrying on, or about to carry on, any such activities as are specified in section *five* of this Proclamation;
- (e) the provision of any money, not being money properly chargeable to revenue, which is required for lending to, or is required to be paid under any guarantee given for the benefit of, any such body corporate as is mentioned in the last preceding paragraph or any other person who is carrying on or about to carry on any such activities as are therein mentioned; and
- (f) any other purpose for which capital moneys are properly applicable.

16. The General Manager may, with the consent of the Board or in accordance with the terms of any general authority given by the Board, borrow temporarily, by way of overdraft or otherwise, such moneys as may be required in the ordinary course of business for the purpose of temporary accommodation and the interest and charges in respect of such borrowing shall be dealt with as portion of the working expenses of the undertaking.

Temporary Borrowing Powers.

17. Any sums in the hands of the Railways which are not immediately required for the purposes of its business may be invested by the Board in such manner as they think proper.

Investments.

18. (1) The General Manager shall submit to the Board budget estimates of the anticipated revenue and expenditure on revenue account and estimates of capital expenditure including, *inter alia*, the amounts charged to the depreciation, renewals and betterment accounts for each ensuing year; in the budget estimates of expenditure not wholly chargeable to working expenses he shall be entitled to provide gross sums in respect of works,

Estimates.

none of which is estimated to involve a sum of six thousand pounds or more, and he shall in such estimates separately classify and give a description of and justification for all works each of which is estimated to involve a sum of six thousand pounds or more. The General Manager shall submit to the Board separate particulars and estimates of the rolling stock and locomotives from time to time required.

(2) The Board shall consider the budget estimates and may either approve them, or, after consultation with the General Manager, direct him to make such modification as to the Board may seem fit. After approval, the budget estimates shall be the authority of the General Manager to incur expenditure accordingly.

Allocation
of Revenue
Receipts.

19. (1) The receipts of the Railways on account in any financial year shall be applied in defraying all expenses properly chargeable against revenue which shall *inter alia*, include Revenue applied in against required for—

- (a) all working expenses of the Railways including the expenses incurred by the Authority in the discharge of its duties, including the salaries and expenses of the Board, in the
- (b) paying pensions to or in respect of persons who have been in the employment of the Railways, of the Company, of the Mashonaland Railway Company, Limited, or of the Railway Commission established under the Railway Proclamation, 1935, repealed by this Proclamation when such pensions are not chargeable to a pension fund, and making adequate contributions to pension or provident funds;
- (c) making due provision for maintenance, renewals, depreciation, appropriations to the rates and wages stabilisation account in accordance with the provisions of subsection (2) of section fourteen of this Proclamation and appropriations to improvement or betterment accounts; and
- (d) paying interest, sinking fund and other loan charges.

(2) From the balance, if any, of the revenue receipts available after meeting the charges in subsection (1) of this section, there shall be paid to the Governments a sum not exceeding six hundred thousand pounds or such lesser sum as may be available. The sum available shall be divided between the Governments so that each Government will receive the same proportion of the

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Authority
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amount available as the portion of the net operating revenue (adjusted by the addition thereto of special expenditure on revenue account and of depreciation and renewals provisions) earned in the territory of each Government bears to the total net operating revenue (adjusted as aforesaid) earned in all the territories:

Provided that—

- (i) the Government of Bechuanaland Protectorate shall for the first five successive years of account be entitled to receive a minimum sum of seventy-five thousand pounds or such lesser sum as the balance, if any, of the revenue receipts will permit; and
 - (ii) when the sum available for division during the period when such guaranteed minimum applies exceeds seventy-five thousand pounds and the *pro rata* share of the Government of the Bechuanaland Protectorate would be less than seventy-five thousand pounds the shortfall between such *pro rata* share and seventy-five thousand pounds shall be borne by an abatement from the share of each of the other Governments in the same proportion as the net operating revenue (adjusted as aforesaid) earned in the territory of the one Government so abating bears to the net operating revenue earned in the territory of the other Government.
- (3) The proceeds of the sale of any part of the undertakings or any property of the Railways under the provisions of sub-section (3) of section *five* of this Proclamation shall not be treated as an ordinary revenue receipt, and where the amount of such proceeds in any one case exceeds the sum of fifty thousand pounds such proceeds shall not be used for any purpose whatsoever without the approval of the Authority.

20. (1) If in any year the receipts of the Railways are not sufficient to meet the charges specified in sub-section (1) of section *nineteen*, the deficiency shall be met from the moneys in the rates and wages stabilization account. If the moneys in that account are insufficient to meet the whole of such deficiency, the remainder of such deficiency shall be made good by the Government of the Federation." ^{Meeting of} ~~Deficiency~~

"20. If in any year the receipts of the Railways are not sufficient to meet the charges specified in sub-section (1) of section *nineteen*, the deficiency shall be met from the moneys in the rates and wages stabilization account. If the moneys in that account are insufficient to meet the whole of such deficiency, the remainder of such deficiency shall be made good by the Government of the Federation." ^{Proc. 63/56}

(a) Seventy-five per centum thereof by the Government of Southern Rhodesia;

(b) twenty per centum thereof by the Government of Northern Rhodesia;

(c) five per centum thereof by the Government of the Bechuanaland Protectorate.

The said agreement is hereby ratified and confirmed, and accordingly in any such case the Government of the Bechuanaland Protectorate shall make good five per centum of the remainder of such deficiency.

(2) The Authority shall review the position at the end of each succeeding period of five years, reckoned from the date of commencement of this Proclamation, and may thereupon, subject to the unanimous agreement of the Governments and to the approval of His Majesty's Government in the United Kingdom, alter the proportions mentioned in paragraphs (a), (b) and (c) of sub-section (1) of this section.

Allocation of Surplus.

21. Any surplus in any year after the charges specified in section *nineteen* of the Proclamation, shall be applied in the first place to the reimbursement of any payments made by the Governments in respect of any previous year in accordance with the provisions of the *twenty* of this Proclamation, in the proportion of their contributions, and the balance of any surplus shall be allocated to the improvement betterment account and the rates and wages stabilisation account in such proportions as the Authority may approve.

Variations of Rates in event of Surplus or Deficit.

22. (1) Whenever the Board considers that the maintenance of existing railway and other rates and charges will produce a greater or less revenue than is reasonably required to meet the charges specified in sub-section (1) of section *nineteen* of this Proclamation, the Board shall, in consultation with the General Manager and subject to the approval of the Authority and to any instruction which the Authority may give under the provisions of sub-section (2) of this section, bring about such variations in the railway and other rates and charges that the revenue in future years will be sufficient to meet the said charges; in considering any proposals for such variations the Board shall disregard any revenue derived from traffic or services of a temporary or non-continuing nature.

(2) Whenever the Board is, in terms of sub-section (1) of this section, considering any variations of the railway and other rates and charges, the Authority shall be empowered, if they think fit, to instruct the Board to make such variations

2000 6/55

the 1956/1957

as will be reasonably calculated to provide a balance for the payment of the whole or such ~~authority may specify, of the sums~~ ^{see} the Governments under sub-section (2) of section ~~nineteen~~ of this Proclamation.

*Repealed in
application of
Proc. 17/53*

23. The receipts and accruals of the Railways shall be exempt from income tax imposed by any law of the Territory. Exemption from Income Tax.

24. (1) The General Manager shall in consultation with the Board cause proper accounts and other records in relation thereto to be kept and shall cause to be prepared in respect of each financial year a statement of accounts in such form as the Board may direct. Accounts and Audit.

(2) The accounts of the Railways shall be audited by an auditor or auditors to be appointed from time to time by the Board. The auditors shall make a report to the Board on the accounts examined by them and on the statement of accounts prepared for the financial year, and the report shall state—

- (a) whether or not they have obtained all the information and explanations which they have required; and
- (b) whether in their opinion the balance sheet contained in such statement of accounts is properly drawn up so as to exhibit a true and correct view of the state of the Railway's affairs according to the best of their information and the explanations given to them, and as shown by the books of the Railways.

(3) Every auditor of the Railways shall have a right of access at all times to the books and accounts and vouchers of the Railways and shall be entitled to require from the members of the Board, the General Manager and officers of the Railways such information and explanations as may be necessary for the performance of the duties of the auditors.

(4) In addition to making their report to the Board, the auditors shall be entitled to make to the Authority any statement or explanations which they desire with respect to the accounts of the Railways which they have examined.

25. The Board shall as soon as possible after the end of each financial year submit to the Authority a report dealing generally with the operation and dealings of the Railways during that year. Such reports shall be accompanied by the statement of accounts referred to in the last preceding section and the report of the auditors thereon. Reports.

RATES.

General
Manager
to fix Rates
and
Conditions
of Carriage.

26. (1) The General Manager shall, subject to the provisions of this Proclamation, have power—

- (a) to fix and alter from time to time the rates, fares and other dues and charges for services of the undertakings of the Railways, whether such services are rendered by the Railways solely or jointly with others; and
- (b) to make regulations governing the conditions under which passengers and goods will be accepted for carriage, and to retain, repeal, modify or add to the existing regulations, which shall remain in force until so repealed or modified.

(2) Before making any alterations in terms of paragraph (a) of sub-section (1) of this section the General Manager shall—

- (a) give reasonable notice to the public of the proposed alterations; or
- (b) if he considers the proposed alterations of sufficient importance to warrant this course, refer the proposed alterations to the Board which shall give reasonable notice thereof to the public and which, after considering any objections lodged by any person against them, shall direct the General Manager as to the action he must take in regard thereto.

Any person may lodge objections to any proposed alterations reasonable notice of which has been given in terms of this sub-section with the General Manager or the Board, as the case may be.

(3) Notwithstanding the provisions of paragraph (a) of sub-section (1) of this section, any person who has made an unsuccessful application to the General Manager for a modification of charges or an unsuccessful objection to the General Manager against any proposed alterations of which reasonable notice has been given in terms of paragraph (a) of sub-section (2) of this section may appeal from the General Manager's decision to the Board, who may uphold, reverse or vary the decision of the General Manager. The decision of the Board shall be final.

Undue
Preference.

27. (1) In respect of the carriage of passengers and goods on any line of railways the General Manager shall not, under the powers conferred by this Proclamation, make or give any undue or unreasonable preference or advantage to or in favour of any particular territory, district, person,

or company, or any particular description of traffic in any respect whatsoever, nor shall he subject any particular territory, district, person or company to any undue or unreasonable prejudice or disadvantage in any respect whatever.

Provided that the practice of granting concessions in accordance with usual railway practice, including the granting of reduced fares to persons proceeding to educational institutions and to residents of the Territory proceeding on holiday, shall not be deemed to constitute an undue or unreasonable preference or advantage.

(2) Whenever it is shown that the Railways charge one trader or class of trader, or the traders in one district or territory, lower charges for the same or similar rail services than they charge to other traders or classes of traders or to the traders in another district or territory, or make any difference in treatment in so far as rail services are concerned in respect of any such trader or traders or in respect of any one territory as compared with any other territory, the burden of proving that such lower charges or difference in treatment did not amount to an undue preference in contravention of this section shall lie on the General Manager.

28. (1) Any user of the rail services of the Railways who has complained of an undue or unreasonable preference or advantage to another and has made an unsuccessful application for redress or any consequential variation of a rate or fare to the General Manager may appeal from the General Manager's decision to the Board, who may uphold, reverse or vary the decision of the General Manager.

Appeals
against
Undue
Preference.

(2) Any appellant who is dissatisfied with any decision of the Board given in terms of sub-section (1) of this section may apply to the Authority for leave to submit his case to a Rates Tribunal. If the Authority is satisfied that there is *prima facie* evidence that there has been an undue or unreasonable preference the Authority may allow the case to be submitted to a Rates Tribunal.

29. Whenever a Rates Tribunal is required for the consideration of any case, the Authority shall constitute such a Tribunal. Every Rates Tribunal shall consist of three members appointed thereto by the Authority, of whom—

Constitution
of Rates
Tribunal.

(a) one member, who shall be president of the Tribunal, shall be a Judge, either of the High Court of Southern Rhodesia or of the High Court of Northern Rhodesia;

- (b) one member shall be a person with railway experience, especially in regard to rates; and
- (c) one member shall be a person with commercial experience.

Consideration and Recommendation of Rates Tribunal.

30. (1) On any question whether a lower charge or difference in treatment does or does not amount to an undue preference a Rates Tribunal may, so far as it thinks reasonable, in addition to any other consideration affecting the case take into consideration whether such lower charge or difference in treatment is necessary for the purpose of securing the traffic in respect of which it is made, or is, in the opinion of the Tribunal, for any other reason desirable in the interests of the public or of trade, and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant: Provided that—

- (i) the interests of the public or of the trade of any one territory shall not be given any unreasonable preference or advantage over the interests of the public or of the trade of any other territory;
- (ii) the practice of applying distribution or reforwarding rates for goods consigned from stations recognised by the Railways from time to time as distribution centres and the granting of such distribution or reforwarding rates shall not be deemed to constitute an undue or unreasonable preference or advantage except to the extent that the Tribunal shall decide, on the representation of the Government of any particular territory.

(2) After consideration of any case submitted to it, a Rates Tribunal shall make a recommendation thereon to the Authority. The Authority shall have full discretion to adopt the recommendation, with or without modifications and to direct the Board accordingly, or to reject the recommendation.

(3) The decision of the Authority on any such case shall be final.

Saving of Existing Contracts.

31. Nothing in this Proclamation contained shall prejudice or affect the power of the Railways to impose railway charges and to make rebates, allowances or reductions on such charges under—

- (a) contracts entered into by the Company, or by the Mashonaland Railway Company, Limited, before the first day of September, 1926; or

- (b) contracts to grant exceptional rates entered into by the Company, or by the Mashonaland Railway Company, Limited, before the nineteenth day of July, 1935, with the consent of the Railway Commission established under the Railway Proclamation, 1935, repealed by this Proclamation; or
- (c) contracts and arrangements to grant exceptional rates entered into by the Company, or by the Mashonaland Railway Company, Limited, before the appointed day with the consent of the Railway Commission established under the Railway Proclamation, 1935, repealed by this Proclamation; or

for the periods and according to the terms by such contracts or arrangements respectively provided.

CONDITIONS OF EMPLOYMENT.

32. (1) The General Manager shall have power, on behalf of the Railways, by himself or by such person or persons as he may from time to time nominate, to appoint and employ such technical officers, secretaries, accountants, clerks, artisans, workmen and other servants as may be requisite for the undertakings of the Railways, and to discharge and dismiss them.

Power of
General
Manager
in regard
to Staff.

(2) The General Manager shall have power to make by-laws and rules regulating the conduct, while on duty, of officers and servants of the Railways, and for that purpose may retain, repeal, modify or add to the working rules, conditions and regulations imposed upon officers and servants of the Company, or contained in any existing by-laws of the Company, which shall remain in force until so repealed or modified.

(3) The powers conferred upon the General Manager by this section shall be subject to the condition that in any matter mentioned in paragraphs (f), (g), (h), (i) or (j) of sub-section (3) of section *eleven* of this Proclamation the General Manager shall not act without the prior consent and approval of the Board.

33. (1) For the recognition of trade unions of employees of the Railways, for the prevention and settlement of disputes between the Railways and their employees, for the regulation by agreement and arbitration of conditions of employment and other matters of mutual interest to the Railways and their employees and for other purposes connected therewith, the provisions of the Schedule to this Proclamation shall apply to the Railways and to their undertakings within the Territory.

Machinery
for
Negotiation
between
Railways
and
Employees.

(2) The law in force in the Territory relating to trade unions and trade disputes shall apply to the Railways and to persons employed by the Railways and to undertakings carried on by the Railways except in respect of matters which are specifically provided for in the Schedule to this Proclamation.

Pensions.

34. (1) The Railways shall have power to provide, either alone or in conjunction with any other person or body, pensions or other benefits for persons and the dependants of persons who are or have been officers or servants of the Railways or of the Company or of any other person or body carrying on or operating any railway undertaking in Africa in conjunction or association with the Railways or the Company or owning any such railway undertaking so carried on or operated or who have been in the employment of the Mashonaland Railway Company, Limited, or of the Railways Commission established under the Railway Proclamation, 1935, repealed by this Proclamation, and to establish and to administer any scheme or fund for those purposes and to make contributions to any such scheme or fund.

(2) Without prejudice to the generality of anything contained in the preceding sub-section of this section, the Railways may enter into agreements with the Company and any other person for the purpose of—

- (a) establishing new schemes or funds in substitution for any scheme or fund existing immediately before the commencement of this Proclamation for the provision of pensions or other benefits for any of the officers or servants of the Company or their dependants; or
- (b) continuing any such existing scheme or fund with such modifications as may be thought advisable;

and may take all steps necessary to carry any such agreement into effect: Provided that no such agreement may be entered into unless it is in conformity with the provisions of the Rhodesia Railways (Pension Schemes and Contracts) Act, 1949, of the United Kingdom.

(3) The original trustees of any new scheme or fund to be established pursuant to sub-section (2) of this section shall be designated by the Authority and the power of removing trustees and of appointing new trustees shall be vested in the Authority.

(4) No pension or right to a pension payable under any scheme or from any fund established or continued under the powers conferred by this section shall be liable to be attached or subjected to any form of execution under a judgment or order of a court of law.

(5) If the estate of any person who is receiving a pension payable under any scheme or from any fund established or continued under the powers conferred by this section is sequestrated, surrendered or assigned for the benefit of his creditors, neither such pension nor any part thereof nor any payment made in place thereof shall form part of the assets in his insolvent or assigned estate or, notwithstanding any other law to the contrary be capable of becoming vested in the trustees of his insolvent estate.

RAILWAY CONSTRUCTION.

35. (1) Whenever the construction of any new ^{New Con-} railway or of any other work in connexion with ^{struction.} any new or any existing railway has been proposed and approved in terms of this Proclamation and any land in the Territory is likely to be needed by the Railways for the purpose of such new railway or other work, the Board may notify to the Resident Commissioner the nature of such new railway or other work and the locality where the land will be needed.

(2) On receipt of any such notification the Resident Commissioner shall give public notice in the *Gazette* of the substance of such notification. Thereupon there shall be conferred and imposed upon the Railways for the purpose of setting out, constructing, maintaining and working such new railway or other work all the rights, powers and privileges and all the duties and obligations which are conferred and imposed upon the Railway Company by ~~Proclamation No. 25 of 1896.~~ *Railway Authority Proclamation (Chapter 138) 1900 68/55*

(3) The course of such new railway between the terminal points thereof or the details of such other work, as the case may be, shall be more particularly defined and determined by a plan or plans and specifications to be lodged by the Railways in the office of the Resident Commissioner and in such other places as the Resident Commissioner may require within such time as the Resident Commissioner may appoint.

*Railway Authority
Proclamation (Cap 138)
Proc. 63/55*

*Railway Authority
Proclamation (Cap 138)
Proc 63/55.*

(4) Upon the completion of any such new railway or other work, the provisions of section ten of ~~Proclamation No. 25 of 1896~~ shall apply to such new railway or other work.

(5) The Railways shall further have the right upon all land referred to in section two of ~~Proclamation No. 25 of 1896~~ to take such private water as may be required for the construction and working of the new railway, for the supplying of passengers and livestock carried thereon, for the use of servants required in connection therewith and for other like objects:

Provided that nothing in this sub-section shall confer any right to take private water which has been impounded by any person other than the Railways.

(6) For the purposes of this section "new railway" includes any new line of railway to be constructed where none existed before, and also any deviation, alteration or addition to any existing line of railway.

Level Crossings.

36. (1) On and after the commencement of this Proclamation it shall not be lawful for any road authority or other person to construct or carry any road across a line of railway except with the approval of the Railways:

Provided that if the Railways refuse to approve of a private road being carried across a line of railway, the person aggrieved by that decision may appeal to the ~~Authority~~ whose decision shall be final.

Proc 63/55

(2) Whenever—

- (a) any road authority which has jurisdiction over or maintains any road considers that the provision of a new level crossing over a line of railway is necessary; or
- (b) such road authority or the Railways consider that protective works are necessary at any level crossing,

either the road authority or the Board may, in the case of dispute, make application to the ~~Authority~~ for determination of the matter.

Proc 63/55
Proc 63/55

(3) On such application the ~~Authority~~ shall cause inquiry to be made and may, if they deem fit, direct that such level crossing or protective works shall be constructed or provided and shall in each case decide and direct the conditions on which the level crossing or protective works shall be constructed or provided and maintained.

(4) The costs of construction or provision and maintenance of any such level crossing or protective works shall be borne by the road authority and by the Railways respectively in such proportions as may be agreed between them, or failing agreement, as may be determined by arbitration.

(5) In apportioning such costs the arbitrators shall pay due regard to the relative advantages and conveniences to both the Railways and the road authority and to the question whether the necessity for the construction or provision of such level crossing or protective works is due to increased railway or road traffic.

37. (1) Whenever at the intersection of a public road and a line of railway such road is carried across the railway by means of a level crossing and either the road authority which has jurisdiction over or maintains such road or the Railways consider that by reason of the density of the traffic on such road or on such railway the level crossing should be abandoned and the road carried over the railway by means of a suitable bridge or under the railway by means of a suitable subway, either the road authority or the Board may make application to the Authority for determination of the matter.

(2) On such application the Authority shall cause inquiry to be made and may, if they deem fit, direct that such bridge or subway shall be constructed and shall in each case decide and direct what proportions of the cost of construction and maintenance shall be borne by the road authority and by the Railways respectively, and the conditions on which the work shall be done and maintained.

(3) The costs of construction and maintenance of such bridge or subway shall be borne by the road authority and by the Railways respectively in such proportions as may be agreed between them or, failing agreement, as may be determined by arbitration. In apportioning such costs the arbitrators shall pay due regard to the relative advantages and conveniences to both the Railways and the road authority and to the question whether the necessity for the construction of such bridge or subway is due to increased railway or road traffic.

MISCELLANEOUS.

38. (1) The General Manager shall have power to make any by-laws which under the laws of the Territory the Company or the directors thereof

Road
and Rail
Crossings

Proc. 63/55.

Proc. 63/55.

By-laws.

would have been empowered to make if the Company had continued to own and operate the undertakings of the Railways.

(2) With a view to ensuring uniformity in all territories of the by-laws relating to the undertakings of the Railways, the General Manager shall, in the case of every by-law made by him which under the laws of the Territory is of no force and effect until approved or confirmed by the High Commissioner, submit such by-law to the Authority for scrutiny before submitting it to the High Commissioner for approval or confirmation.

(3) All by-laws made by the Company or the directors thereof, which are in force at the commencement of this Proclamation, shall remain in force until altered or repealed in terms of this section.

Indemnity
for Railway
Commission and
Company.

39. The Railway Commission established under the Railway Proclamation, 1935, repealed by this Proclamation and the Company are hereby indemnified for—

- (a) omitting to comply with, and to secure compliance with, the provisions of section *sixteen* of the said Proclamation in regard to the raising of new capital by the Company by borrowing from the Government of Southern Rhodesia for the purposes of discharging its debenture indebtedness and of providing further capital prior to the transfer of the undertakings of the Company to the Railways; and
- (b) all other acts in good faith done by the Railway Commission or the Company contrary to the said Proclamation, or in good faith omitted to be done in accordance therewith, during the period between the acquisition by the Government of Southern Rhodesia or the shares of the Company on the first day of April, 1947, and the appointed day;

and no such act or omission shall subject the Railway Commission or the Company or any member, officer or servant of either of them to any liability, action, claim or demand whatsoever.

Repeals.

40. (1) The Railway Proclamation, 1935 (No. 37 of 1935), the Railway (Amendment) Proclamation, 1937 (No. 30 of 1937), the Railway (Amendment) Proclamation, 1941 (No. 36 of 1941), and the Railway (Further Amendment) Proclamation, 1941 (No. 61 of 1941), are hereby repealed as from the appointed day.

(2) Section *twenty-five* of the Regulation of Railways Act, 1861, of the Cape of Good Hope as applied to the Bechuanaland Protectorate by Proclamation No. 25 of 1896 shall not apply to the Railways but nevertheless, the Railways shall, according to the powers conferred upon them by this Proclamation and any other law, afford reasonable facilities for the receiving, forwarding and delivery of traffic upon and from the Railways and other undertakings owned or operated by them.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Sixteenth day of September, One thousand Nine hundred and Forty-nine.

E. BARING,
High Commissioner.

By Command of His Excellency
the High Commissioner.

W. A. W. CLARK,
Chief Secretary.

SCHEDULE.

MACHINERY FOR RECOGNITION OF TRADE UNIONS OF RAILWAY EMPLOYEES, FOR THE PREVENTION AND SETTLEMENT OF DISPUTES BETWEEN THE RAILWAYS AND THEIR EMPLOYEES AND FOR THE REGULATION BY AGREEMENT AND ARBITRATION OF CONDITIONS OF EMPLOYMENT AND OTHER MATTERS OF MUTUAL INTEREST TO THE RAILWAYS AND THEIR EMPLOYEES.

(Section 33.)

PRELIMINARY.

1. In this Schedule, unless inconsistent with the context—

“chief industrial officer” means the chief industrial officer appointed under the Industrial Conciliation Act, 1945, of Southern Rhodesia;

“employee” means any person employed by or working for the Railways;

“industrial council” or “council” means an industrial council established, registered and constituted under the Second Schedule to the Rhodesia Railways Act, 1949, of Southern Rhodesia;

Interpreta-
tion of
Terms.

“ interests ” means—

- (a) in the case of the registered trade unions, the interests in respect of which they are registered; and
- (b) in the case of the statutory union, the interests of all African employees employed in the railway undertakings;

“ lock-out ” means any one or more of the following acts or omissions by the Railways:—

- (a) the exclusion by them of any body or number of persons who are or have been in their employ from any premises on which work provided by them is or has been performed; or
- (b) the total or partial discontinuance by them of their business or of the provision of work; or
- (c) the breach or termination by them of the contracts of employment of any body or number of persons in their employ; or
- (d) the refusal or failure by them to re-employ any body or number of persons who have been in their employ;

if that exclusion, discontinuance, breach, termination, refusal or failure is in consequence of a dispute regarding conditions of employment or other matters, and the purpose of that exclusion, discontinuance, breach, termination, refusal or failure is to induce or compel any persons who are or have been in their employ or in the employ of other persons to agree to or comply with any demands concerning conditions of employment or re-employment or other matters made by it or on its behalf or by or on behalf of any other person who is or has been an employer;

“ matters of mutual interest ” includes the terms and conditions of apprenticeship and factory conditions in the railway undertakings;

“ Ministers ” means—

- (a) such Minister of the Crown in Southern Rhodesia as the Governor of that Colony may from time to time designate; and

(b) such person as the High Commissioner may from time to time designate;

as a Minister for the purposes of this Schedule;

“registered trade union” means the Amalgamated Engineering Union and the Rhodesia Railway Workers’ Union;

“regulation” means a regulation made and in force under this Schedule;

“statutory union” means the trade union registered under sub-section (1) of section *three* of this Schedule;

“strike” means any one or more of the following acts or omissions by any body or number of persons who are or have been employed by the Railways:—

(a) The refusal or failure by them to continue, in the railway industry, to work (whether the discontinuance is complete or partial) or to resume work or to accept re-employment, or the wilful retardation by them of the progress of work or the wilful obstruction by them of work; or

(b) the breach or termination by them of their contracts of employment in the railway industry; if—

(i) that refusal, failure, retardation, obstruction, breach or termination is in consequence of a dispute regarding conditions of employment or other matters, and is in pursuance of any combination, agreement or understanding, whether expressed or not, entered into between them; and

(ii) the purpose of that refusal, failure, retardation, obstruction, breach or termination is to induce or compel the Railways or any other employer to agree to or comply with any demands concerning conditions of employment or re-employment or other matters made by or on behalf of them or any of them or any other persons who are or have been employed.

PART I.

REGISTRATION OF TRADE UNIONS.

Amalgamated Engineering Union and Rhodesia Railway Workers' Union to be Registered in respect of their Existing Interests in the Railway Industry.

2. (1) The trade unions, known on the appointed day as the Amalgamated Engineering Union and the Rhodesia Railway Workers' Union shall, as soon as possible after the appointed day, be registered by the Ministers under this Schedule as respectively representing in the railway undertakings throughout the Territory the interests for which the corresponding unions in Southern Rhodesia are on the appointed day respectively registered for the railway area under the Industrial Conciliation Act, 1945, of Southern Rhodesia.

(2) Each of these registered unions shall, during registration under this section be a body corporate within the Territory and shall be capable in law of suing and being sued and of purchasing or otherwise acquiring, holding and alienating property, movable or immovable.

(3) The Ministers shall cancel the registration of a registered trade union if they are satisfied—

- (a) that the registration of the corresponding union in Southern Rhodesia has been cancelled; or
- (b) that the union is no longer registered under this Schedule for any interest in the railway undertaking;

Provided that the liability, if any, of every person charged with the winding-up of the union and every office-bearer, official and member of the union shall continue and may be enforced as if the registration of the union had not been cancelled.

Registration of Statutory Union.

3. (1) Notwithstanding the provisions of section two of this Schedule and subject to the provisions of sub-section (2) of this section, the Ministers may on application by an unregistered trade union register one trade union (and not more than one) to represent in the railway undertakings African employees who are not members of either of the registered unions.

(2) The Ministers shall not register a trade union under sub-section (1) of this section unless they are satisfied that—

- (a) the union will be sufficiently representative of African employees in the railway undertakings who are not members of either of the registered trade unions;

- (b) the constitution of the union is consistent with this Schedule and does not contain provisions which are contrary to the provisions of any law, or are calculated to hinder the attainment of the objects of any law, or are not in the interests of the effective functioning of the trade union, or are contrary to the public interest;
- (c) the constitution of the trade union does not contain any provision—
 - (i) whereby a member of the trade union is required to subscribe to the funds of any political party or organisation; or
 - (ii) whereby the funds of the trade union may be used for furthering the interests of any political party or organisation operating in Southern Rhodesia.

(3) Upon registration of a trade union in terms of this section, the Ministers shall cause publication of the fact to be made in the *Gazette* and shall furnish a certificate of registration to the statutory union stating that such union is registered under this Schedule.

4. (1) A registered trade union may apply to the Ministers for its registration in respect of additional interests in the railway undertakings. Variation of Interests.

(2) If the Ministers are satisfied in respect of any such application that there is no registered trade union which represents in the railway undertakings the interests in respect of which application is made, they shall register the applicant union to represent those interests in the railway undertakings for which it applies for registration.

(3) If upon the receipt of an application under sub-section (1) of this section the Ministers consider that the other registered trade union represents such additional interests in the railway undertakings in respect of which an amended registration is sought, they shall by direct communication with such trade union inform that union of the application and invite it to submit to them in writing or otherwise as indicated by them within one month of the communication any objection which it may have to the application and take into consideration any objection duly so submitted to them. Any union submitting any such objection shall furnish the Ministers within a period fixed by them with such information as they may require.

(4) If the Ministers are satisfied that a registered trade union sufficiently represents in the railway undertakings the additional interests applied for by the applicant union, they shall refuse to register the applicant union to represent those additional interests.

(5) If the Ministers are satisfied that no registered union sufficiently represents in the railway undertakings the whole or part of the additional interests applied for by the applicant union, they shall register the applicant union in respect of those interests which in their opinion are not sufficiently represented by the other registered unions and shall make the necessary amendments in their registers and the certificate of registration issued to the trade unions in question.

Statutory
Union to be
Body
Corporate.

5. The statutory union shall, upon registration under this Schedule become a body corporate and shall be capable in law of suing and being sued and of purchasing or otherwise acquiring, holding and alienating property, movable or immovable.

Transfer of
Rights and
Liabilities
of Members
to Statutory
Union and
Limitation
of Liability
of Members.

6. (1) Upon the registration under this Schedule of the statutory union, all rights and liabilities of the members thereof in their capacity as such shall devolve upon the union.

(2) Unless it is otherwise provided by the constitution of the statutory union, no person shall, by reason only of the fact that he is a member, office-bearer or official of that union, be liable for any of the obligations of that union.

Matters
for which
Constitution
of Statutory
Union must
or may
Provide.

7. (1) The constitution of the statutory union shall provide for the following matters:—

- (a) The qualifications of membership, and the manner in which the amounts of the subscription (if any) to be paid by members shall be determined;
- (b) the appointment, removal and powers of office-bearers and officials;
- (c) the calling and conduct of meetings of members or of representatives of members of the union;
- (d) the election of representatives on any industrial council;
- (e) the acquisition and control of property;
- (f) the keeping of books of account and the periodical auditing of accounts at least once every year, and the making available to members of true copies of the audited accounts and of the auditor's reports thereon;

- (g) the maintenance of a register of members and a record of the subscriptions (if any) paid by each member, and the periods to which those payments relate;
- (h) the circumstances in which a member shall cease to be entitled to any of the benefits of membership;
- (i) the alteration of the constitution;
- (j) the winding-up of the union;
- (k) the giving to any person who is refused membership of the union or is expelled therefrom of written reasons for such refusal of membership or expulsion; and
- (l) such other matters as are prescribed by regulation.

(2) The constitution of the statutory union may provide for the following matters:—

- (a) The purposes to which any of its funds may be applied;
- (b) the benefits to which members may become entitled;
- (c) the fines, levies and forfeitures to which members are liable;
- (d) the establishment of an executive committee and other committees;
- (e) the holding of ballots, in which case the constitution shall prescribe the manner in which any ballot shall be conducted and controlled; and
- (f) any other matter which in the opinion of the Ministers is suitable to be dealt with in the constitution of the statutory union.

(3) Subject to the provisions of sub-sections (1) and (2) of this section and sub-section (2) of section *three* of this Schedule, the constitution of the statutory union may be altered from time to time with the approval of the Ministers.

8. Whenever under the constitution of the statutory union the power to take any ballot or to take part in or to continue or to discontinue any strike is exercisable by such union or any committee or office-bearer or official thereof, such union, committee or office-bearer or official thereof shall not delegate that power to any other person or body.

Delegation
of Certain
Powers
Prohibited.

9. (1) The statutory union shall furnish to the Ministers such information as may be prescribed by regulation.

Information
to be
furnished to
Ministers.

(2) The chief industrial officer shall on request by the Ministers furnish to them any information obtained by him from the Amalgamated Engineer-

ing Union or the Rhodesia Railway Workers' Union under section *sixteen* of the Industrial Conciliation Act, 1945, of Southern Rhodesia.

Cancellation
of
Registration
of Statutory
Union.

10. (1) When the Ministers have reasonable cause to believe that a statutory trade union has been wound up or is not functioning as a trade union they shall cause to be sent to the union a registered letter inquiring whether its winding up has been completed or whether it is functioning as such, as the case may be, and stating that if an answer is not received within fourteen days from the date thereof, a notice such as is referred to in sub-section (2) of this section will be published in the *Gazette*.

(2) If the Ministers—

- (a) receive an answer from the union to the effect that its winding-up has been completed or that it is not functioning as a trade union; or
- (b) receive some other answer from the union and are not satisfied after inquiry that the winding-up of the union has not been completed or that it is functioning as a trade union; or
- (c) do not, within fourteen days of sending the letter, receive any answer;

they may publish in the *Gazette* and send to the union or cause to be sent by registered post a notice that at the expiration of a period mentioned in that notice the registration of the trade union mentioned therein will, unless cause is shown to the contrary, be cancelled.

(3) At the expiration of the period mentioned in any such notice as is described in sub-section (2) of this section, the Ministers may, unless cause to the contrary to their satisfaction is previously shown, cancel the registration of the union.

(4) A letter or notice under this section shall be addressed to the union at its last-known head office.

(5) Whenever the Ministers cancel the registration of a trade union they shall cause notice thereof to be published in the *Gazette*.

(6) Upon the cancellation of the registration of any trade union, that union shall cease to be a body corporate:

Provided that the liability (if any) of every person charged with the winding-up of a union and every office-bearer, official and member of the union shall continue and may be enforced as if the registration of the union had not been cancelled.

11. (1) The Railways shall not make it a condition of employment of any employee that that employee shall not be or become a member of a trade union.

Freedom of Association of Employees.

(2) Nothing contained in any law shall prohibit any employee from being or becoming a member of a trade union, or subject him to any penalty by reason of his membership of any trade union.

PART II.

INDUSTRIAL COUNCILS.

12. (1) Every industrial council shall be capable in law of suing and being sued in its corporate name within the Territory, and of purchasing or otherwise acquiring, holding and alienating property, movable or immovable.

Industrial Councils to be Bodies Corporate and Liabilities of Parties to be Limited.

(2) Unless it is otherwise provided by the constitution of an industrial council, neither the Railways nor a trade union shall, by reason only of the fact that it is a party to that council, be liable for any of the obligations of that council; nor shall any member of the council, by reason only of the fact that he is a member, be liable for any such obligation.

13. An industrial council shall endeavour by negotiation of agreements or otherwise to prevent disputes in which the Territory is concerned from arising and to settle disputes which have arisen or may arise between the Railways and the trade unions which are parties to the council or the employees whose interests are represented by such unions and take such steps as it may think expedient to bring about the regulation or settlement of matters of mutual interest to the Railways and such unions and such employees:

Duties of Industrial Council.

Provided that a council shall have no jurisdiction to deal with any matter relating to an interest in respect of which such council has not been registered.

14. (1) An agreement which may be declared binding under section *twenty-nine* of this Schedule may include provisions as to all or any of the following matters:—

Matters that may be dealt with by Industrial Council Agreement.

- (a) The minimum rate at which remuneration shall be paid by the Railways to each of their employees or to each member of any class of their employees;
- (b) the minimum average rate of remuneration which shall be paid by the Railways to their employees or to the members of any class of their employees:

Provided that different minimum average rates may be provided for different fractions of any class of employees;

- (c) the minimum rate at which remuneration shall be paid by the Railways to each employee or to each member of any class of employees successively on the expiration of specified periods or intervals or which shall be paid to any employee or any member of any class of employees according to experience or any other standard;
- (d) deductions which may be made by the Railways from any remuneration payable to any of their employees, in addition to deductions which by any law or any order of any competent court it is required or permitted to make;
- (e) the method of calculating minimum rates of remuneration or minimum average rates of remuneration;
- (f) the day of the week, date, time, place and manner of payment of remuneration, the statements to be furnished by the Railways to the employee concerning the payment, the container in which the money to be paid shall be enclosed and the information to be written upon the container and, generally, any other provisions as to the manner of payments;
- (g) the payment by the Railways to an employee who has performed during any period piece-work (irrespective of the amount thereof) of a remuneration for the piece-work performed by that employee during that period, which shall be not less than the remuneration which would have been payable to the said employee by the Railways had he been employed as a time-worker during that period;
- (h) the maintenance by the Railways of records of work performed by piece-workers and the form of such records;
- (i) the prohibition or the regulation of the giving out to, or the performance by, an employee of piece-work or task-work;
- (j) the prohibition of the performance of work on premises or at places of a specified description or type or used for a specified purpose or elsewhere than on such premises or at such places;

- (k) the maximum number of apprentices who may be employed by the Railways in proportion to the number of journeymen or to the total number of employees employed by them;
- (l) the prohibition of any payment to, or the acceptance of, any payment by the Railways, either directly or indirectly, in respect of the employment or training of any employee;
- (m) the notices to be exhibited by the Railways;
- (n) the prohibition of the employment of any person under a specified age;
- (o) special conditions of employment for female and for juvenile employees;
- (p) the terms and conditions of apprenticeship and learnership;
- (q) the contributions to be paid by the Railways and employees or members of specified classes of employees towards the expenses of the council in the performance of its functions;
- (r) the granting of exemption to any person from any of the provisions of an agreement and the conditions which shall apply thereto;
- (s) the establishment of pension, sick, medical, unemployment, holiday, provident and other insurance funds, and the levying upon the Railways and employees of contributions for such funds;
- (t) the prohibition of the payment of remuneration otherwise than in money;
- (u) the maximum number of hours to be worked in any particular occupation in any day or week;
- (v) the prohibition or limitation or regulation of overtime work;
- (w) the grading by the council of employees according to bases or principles prescribed in the agreement;
- (x) in dangerous occupations, the provision of adequate safety devices;
- (y) in any occupation, the establishment of the conditions necessary for maintaining the health of the employees;
- (z) the issue by the Railways to any member of a specified class of their employees, on the termination of his employment, of a certificate setting forth a period during which he has been employed and such other particulars as may be specified in the agreement;

(aa) the keeping by any member of a specified class of employees of a record containing such particulars as may be prescribed in the agreement;

and generally as to any matter affecting or connected with the remuneration or other conditions of employment of all employees or of the members of any class or classes of employees, whether remunerated according to time worked or work performed or on any other basis, or as to any matter whatsoever of mutual interest to the Railways and employees, the scope of this provision not being limited in any way by the mention in this sub-section of particular matters.

(2) For the purposes of this section, "class of employees" and "class of its employees" includes such group or section or type of employees as may be specified or defined in the agreement, and in the making of any such specification or definition any method of differentiation or discrimination based on age, sex, experience, length of employment or type of work or type or class of premises on or in which work is performed or any other method which is deemed to be advisable may be applied.

Delegation
of Functions
by
Industrial
Council to
Executive
or Other
Committee.

15. An industrial council may, subject to such conditions as it may determine, delegate to any executive or other committee established in terms of its constitution any of its functions in connexion with the administration of any agreement which is made binding under section *twenty-nine* of this Schedule:

Provided that the decision of any such committee may at any time be reversed or varied by the council with effect from the date of reversal or variation.

Chairman
of Industrial
Council.

16. (1) The chairman and the vice-chairman of an industrial council shall be chosen by the council from amongst its members or otherwise.

(2) If the council fails to fill any vacancy which may exist in the office of chairman or vice-chairman, the Ministers shall, after the expiration of a period to be fixed by them and notified to the council, appoint as chairman or as vice-chairman any person selected by them from amongst the members or otherwise; and any person so appointed shall hold office until a chairman or vice-chairman, as the case may be, shall have been chosen by the council.

(3) The chairman, and in his absence, the vice-chairman, shall, subject to the provisions of sub-section (2) of section *twenty-three* of this Schedule,

preside at all meetings of the council; and if the chairman and the vice-chairman are both absent from any meeting, that meeting shall, subject to the said provisions, be presided over by a person chosen by the members present from amongst their number.

(4) If the chairman or vice-chairman has not been selected from amongst the members, he shall not be entitled to vote.

17. (1) Meetings of an industrial council shall be held at such times and places as the council or the chairman may from time to time determine, upon such notification to members as may be prescribed by its constitution. Meetings of
Industrial
Council.

(2) Subject to the provisions of sub-section (3) of this section, a majority of the total number of members shall form a quorum at any meeting.

(3) If the number of members present at the time and place fixed for a meeting is insufficient to form a quorum, a meeting of the council shall, upon such notification to members as may be prescribed by regulations be held on a date not less than seven days thereafter, and at that meeting four or any greater number of members present shall form a quorum:

Provided that if all the representatives of the Railways or all the representatives of the employees on the council are absent from such adjourned meeting, the representatives who are present shall be deemed to form a quorum and make take evidence and report thereon and for this purpose may exercise the powers conferred on an industrial council by section *nineteen* of this Schedule.

(4) If any representative of the Railways or of the employees is absent from any meeting any alternate of the representatives of the Railways or of the employees, respectively, may act in his stead at that meeting; and at that meeting he shall in all respects be regarded as a representative of the Railways or of the employees, as the case may be.

(5) For every representative of the Railways who is absent from any meeting, and in whose stead an alternate of the Railways does not, in terms of sub-section (4) of this section, act, one representative of the employees shall not be allowed to vote at that meeting; and the representatives of the employees present at that meeting shall determine by a majority vote which of their number shall be so excluded from voting.

(6) If any representative of the employees is absent from any meeting, and an alternate of the representatives of the employees does not, in

terms of sub-section (4) of this section, act in his stead, the provisions of sub-section (5) of this section shall, *mutatis mutandis*, apply.

(7) At any meeting of an industrial council a decision in favour of which have voted both a majority of such representatives of the Railways and a majority of such representatives of the employees as are present at the meeting and are entitled to vote thereon shall be the decision of the industrial council.

(8) The provisions of sub-sections (2), (3), (4) and (7) of this section shall not apply if the constitution of the council otherwise provides in respect of the matters referred to in those sub-sections.

(9) Subject to the provisions of sub-section (6) of section *nineteen* of this Schedule, every meeting of a council shall be conducted in private, unless the council should otherwise decide.

Minutes of Proceedings.

18. (1) Every industrial council shall cause minutes of all proceedings of every meeting of the council to be kept.

(2) The secretary shall submit the minutes of any meeting of the council to the next succeeding meeting of the council, and the council shall, after causing to be made therein such corrections as it thinks necessary, confirm the minutes by resolution, and the person presiding at the meeting shall sign the minutes so confirmed.

(3) Any minutes purporting to be signed in terms of sub-section (2) of this section shall be evidence of the proceedings recorded therein.

Summoning and Examination of Witnesses by Industrial Council or Committee.

19. (1) In the performance of any duty or the exercise of any right imposed or conferred upon it by or under this Schedule, an industrial council and the executive committee or committee of management of a council established in terms of its constitution shall, for the purposes of any inquiry, have the power to summon witnesses, to call for the production of and grant inspection of books, documents and other things, and to examine witnesses on oath.

(2) A summons issued in the exercise of the said powers shall be signed by the chairman or vice-chairman or secretary of the council or by the person elected to preside over the meeting of the committee at which the witness is summoned to appear; such summons may call upon any person who, in the opinion of the person issuing the summons, may be able to give material information concerning the subject of the inquiry or whom he suspects or believes has in his possession or custody or under his control any book,

document or thing which has any bearing upon the subject of the inquiry to appear before the council or committee at a time and place specified in the summons, to be interrogated or to produce that book, document or thing. The council or committee may retain for examination any book, document or thing so produced.

(3) A summons issued under this section shall be served in the manner prescribed by regulations.

(4) The person presiding over the meeting of the council or committee at which any witness appears, whether the witness has been served with a summons or not, shall have power to administer an oath to the witness and may require him to produce any book, document or thing in his possession or custody or under his control.

(5) The person presiding over the meeting of the council or committee at which any witness appears and any member present at that meeting may put any question to the witness:

Provided that the person presiding at the meeting may in his discretion disallow any question which in his opinion is not relevant to the inquiry which is being made by the council or committee.

(6) The interrogation of any witness under this section shall be conducted in private, unless the person presiding at the meeting decides otherwise:

Provided that—

(i) at the request of any witness the interrogation of that witness shall be conducted in private; and

(ii) the person presiding at the meeting may in his discretion and with the consent of the witness authorise the presence of any specified person at the interrogation of that witness.

(7) If any person being duly summoned under this section fails without sufficient cause to attend at the time and place specified in the summons or to remain in attendance until excused from attendance by the person presiding at the meeting, or if any person when lawfully required to do so under this section, refuses to be sworn as a witness, or fails without sufficient cause to answer fully and satisfactorily to the best of his knowledge and belief all questions lawfully put to him, or to produce any book, document or thing in his possession or custody or under his control, he shall be guilty of an offence:

Provided that, in connexion with the interrogation of any such person or the production of any such book, document or thing under this section,

the law relating to privilege, as applicable to a witness summoned to give evidence or produce any book, document or thing before a court of law, shall apply.

(8) Any witness who after having been sworn gives a false answer to any question put to him under this section or makes a false statement on any matter, knowing that answer or statement to be false, or not knowing or believing it to be true shall be deemed to be guilty of perjury and shall be liable to be prosecuted and punished accordingly.

(9) Any person summoned under this section to appear before a council or committee may, if the person presiding at the meeting is satisfied that he has by reason of his appearance in obedience to the summons suffered by any pecuniary loss or been put to any expense, be paid out of the funds of the council concerned any allowances that may be prescribed by regulation or the amount of such loss and such expense, whichever is the less.

(10) Any person who wilfully hinders or insults in the exercise of the powers conferred upon him by this section the chairman or vice-chairman or secretary of an industrial council or the person presiding over the meeting of any such council or committee thereof or any member of such council or committee shall be guilty of an offence.

Terms of Agreement or Settlement arranged by Industrial Council to be transmitted to Ministers.

20. Whenever an industrial council has negotiated an agreement such as is referred to in section *fourteen* of this Schedule or has otherwise than by agreement settled a dispute, a copy of the agreement or a statement of the terms of the settlement otherwise than by agreement shall be signed by the chairman, the vice-chairman and the secretary of the council or by any three persons duly authorised thereto by the council on behalf of the parties or their representatives and shall be transmitted to the Ministers.

Annual Accounts of Industrial Council.

21. (1) Every industrial council shall, at least once in every calendar year, cause to be prepared an account of all the revenue and expenditure of the council since the close of the period covered by the preceding account and a statement showing its assets and liabilities.

(2) Every such account and statement shall be certified by the auditor of the council appointed in terms of its constitution, and shall be countersigned by the chairman of the council and shall, within three months after the close of the period

covered by it, be transmitted by the council to the Ministers, together with any report made thereon by the said auditor.

(3) The council shall furnish to the Ministers within a period to be fixed by them, such particulars in explanation or amplification of the account and statement as may be required by them.

22. Any dispute, relating to an interest in respect of which no industrial council has been registered under this Schedule, shall be dealt with in accordance with any other law in force in the Territory relating to industrial disputes.

Procedure
if no
Industrial
Council.

PART III.

MEDIATION AND ARBITRATION.

23. (1) If any industrial council applies to the Ministers for the appointment of a mediator in respect of any dispute which is being considered by that council, or if the Ministers are of opinion that the appointment of a mediator will aid in the settlement of a dispute by any industrial council, they may appoint a person to be mediator in respect of that dispute.

Mediation.

(2) A mediator so appointed shall be entitled to attend and preside at the meetings of the council at which the dispute is being considered, but shall not be entitled to vote thereat.

(3) A mediator so appointed shall confer with the council, conduct such inquiries and investigations as he may deem necessary, endeavour to bring about a settlement of the dispute and make a report to the Ministers as to the results of his mediation.

(4) Such expenses in connexion with mediation, including the payment of a fee to the mediator, as are approved by the Ministers shall be paid by the Railways.

24. (1) An industrial council may decide that any dispute, which has been under the consideration of that council, shall be referred to a single arbitrator or to an even number of arbitrators for decision.

Voluntary
Arbitration.

(2) Whenever an industrial council has decided to refer a dispute to more arbitrators than one, an umpire shall also be appointed.

(3) If an industrial council has decided to refer a dispute to a single arbitrator for decision that person shall be appointed arbitrator in favour of whose appointment a majority of all the representatives of the employees and a majority of all the representatives of the Railways have voted.

(4) If an industrial council has decided to refer a dispute to more arbitrators than one, half the number of the arbitrators shall be appointed by the representatives of the employees and half by the representatives of the Railways.

(5) Whenever in terms of sub-section (2) of this section it is necessary to appoint an umpire, that person shall be appointed umpire in favour of whose appoint a majority of all the representatives of the employees and a majority of all the representatives of the Railways have voted.

(6) Whenever an arbitrator or umpire has been appointed in terms of this section by the council or by representatives, such council shall forthwith notify the Ministers of the name of the person so appointed.

(7) If within a period of ten days (or within such longer period as the council, with the approval of the Ministers, may fix) after the decision has been made to refer the dispute to arbitration the appointment has not been made of the arbitrator, or, as the case may be, of one or more of the arbitrators or the umpire, the Ministers shall appoint such person or persons as they may themselves select.

(8) If more arbitrators than one have been appointed, the decision of the majority of the arbitrators shall be the decision of the arbitrators; and if a majority of the arbitrators are not agreed on any point, the umpire shall give the decision on that point.

(9) The arbitrator, arbitrators, or umpire, as the case may be, shall forward a copy of the award and of any report in connexion therewith to the Ministers and to the parties concerned; and the Ministers shall, within fourteen days of the receipt thereof, make such publication of the whole of the award or report, or any portions thereof or extracts therefrom, as they may deem desirable, and any of the parties concerned may publish the whole of the award or report, or such portions thereof or extracts therefrom, as the Ministers may approve.

(10) In the performance of their functions the arbitrator or arbitrators and the umpire, as the case may be, shall, *mutatis mutandis*, have all the powers conferred upon an industrial council by section *nineteen* of this Schedule.

Compulsory
Arbitration.

25. (1) This section shall apply to any of the following disputes whenever such a dispute has under this Schedule been referred to an industrial council and such council has failed to settle it within thirty days after the appointment of a

mediator in terms of section *twenty-three* of this Schedule or before the expiration of such further period or periods as the Ministers may fix—

- (a) any failure of the parties to an industrial council to form an agreement governing the conditions of employment in the railway undertakings; such a failure shall, for the purposes of this section, be deemed to be a dispute;
- (b) any other dispute whatsoever if the majority of the representatives either of the Railways or of the employees on the industrial council wish the dispute to be referred to arbitration, and the majority of the representatives of the other party, that is to say, the employees or the Railways, as the case may be, do not wish the dispute to be referred to arbitration.

(2) If the council fails to settle the dispute within the period or periods referred to in sub-section (1) of this section, it shall upon the expiration of that period or those periods, or if before that period or those periods have expired it has satisfied itself that further deliberation will not result in a settlement of the dispute, it shall, upon becoming so satisfied forthwith report its failure or the fact that it has so satisfied itself to the Ministers.

(3) The council shall, forthwith after the expiration of the period or periods referred to in sub-section (1) of this section, or if before that period or those periods expire it has satisfied itself that further deliberation will not result in a settlement of the dispute, then forthwith after it has so satisfied itself, decide whether the dispute shall be referred to a single arbitrator or an even number of arbitrators for decision.

(4) Whenever it is decided in terms of sub-section (3) of this section to appoint more arbitrators than one, an umpire shall also be appointed.

(5) If within a period of fourteen days after the expiration of the period or periods referred to in sub-section (1) of this section, or if before the last-mentioned period or periods have expired the council has satisfied itself that further deliberation will not result in the settlement of the dispute, then within a period of ten days after it has so satisfied itself, the council has not determined whether a single arbitrator or an even number of arbitrators shall be appointed, or has not determined how many arbitrators shall be appointed, the Ministers shall determine whether

a single arbitrator or more than one arbitrator (and, if so, how many) shall be appointed, and if within a period of ten days from the date the Ministers notify it of such determination no appointment or appointments have been made of the arbitrator, or, as the case may be, of one or more of the arbitrators or the umpire, the Ministers shall appoint such person or persons as they themselves may select.

(6) The provisions of sub-sections (3), (4), (5), (6), (8), (9) and (10) of section *twenty-four* of this Schedule shall, *mutatis mutandis*, apply to arbitration and the making of appointments under this section.

Cost of Arbitration. 26. The costs of any arbitration proceedings under section *twenty-four* or *twenty-five* of this Schedule, including the payments (if any) made to witnesses, shall be paid from the contributions referred to in paragraph (q) of sub-section (1) of section *fourteen* of this Schedule.

Application of Arbitration Legislation. 27. In any arbitration under this Schedule the provisions of the law in force in the Territory for the time being relating to arbitration shall apply in respect of any matter not otherwise provided for in this Schedule.

PART IV.

MISCELLANEOUS.

Effect of Arbitration Awards. 28. (1) Any award made by an arbitrator, arbitrators or umpire appointed under section *twenty-four* or *twenty-five* of this Schedule shall be final and binding upon the Railways and the unions which are represented on the council and the employees whose interests are represented by such unions for a period which shall be fixed by the arbitrator, arbitrators or umpire, and which shall not be less than six months nor more than twelve months.

(2) The arbitrator, arbitrators or umpire shall fix the date from which the award or any portion of the award shall operate, which date may be the date on which the award is given or an earlier or later date:

Provided that an award shall not operate from an earlier date than the date upon which, in the opinion of the arbitrator, arbitrators or umpire, the dispute came into existence.

29. (1) Whenever an industrial council transmits to the Ministers any agreement entered into between the parties to the council, such council may request the Ministers to declare the agreement to be binding in terms of this section.

Application
of
Agreements.

(2) On receipt of a request made in terms of sub-section (1) of this section, the Ministers may, if they deem it expedient, by notice in the *Gazette* publish the agreement and declare that from such date and for such period as shall be specified in the said notice the terms of the agreement shall be binding upon the Railways and the unions which are parties to the council and the employees whose interests are represented by such unions.

30. In considering whether it is expedient to declare an agreement binding in terms of section *twenty-nine* of this Schedule the Ministers shall pay due regard to the interests of the public of the territories as a whole.

Ministers'
Duties in
considering
Agreements.

31. (1) If the Ministers refuse to make an agreement binding when requested to do so in terms of section *twenty-nine* of this Schedule, they shall transmit to the industrial council concerned details of the amendments upon adoption of which they are willing to make such an agreement binding.

Amendment
of
Agreements
at instance
of Ministers.

(2) If during the period of operation of any agreement which has been made binding in terms of section *twenty-nine* of this Schedule, the Ministers are satisfied that owing to changed conditions or from any other cause the operation of such agreement is inequitable to the Railways, to employees, or to members of the public of the territories as a whole, the Ministers may transmit to the industrial council concerned suggested amendments to such agreement.

(3) If, as a result of suggestions made in terms of sub-section (1) or (2) of this section, the Ministers and the industrial council agree upon the amendments to be made to such agreement, the Ministers shall publish and declare to be binding such amended agreement accordingly. If the Ministers and the council are unable to agree, the decision of the Ministers shall be final and the Ministers shall have power to publish and declare to be binding the agreement, as amended, in accordance with their decision.

(4) (a) If the Ministers and the industrial council are unable to agree in terms of sub-section (3) of this section, the matter shall be referred

by the Ministers for decision to a tribunal of three persons chosen by agreement between the Ministers and such council.

(b) The Ministers and such council shall be entitled to lead such evidence before and make such representations to the tribunal as they may think fit.

(c) In the performance of its functions the tribunal shall, *mutatis mutandis*, have all the powers conferred upon an industrial council by section *nineteen* of this Schedule.

(d) The decision of the majority of the tribunal shall be the decision of the tribunal.

(e) The tribunal shall forward a copy of its decision and of any report in connexion therewith to the Ministers, and the Ministers shall, if the decision of the tribunal necessitates an amendment to the agreement, publish and declare to be binding the agreement as amended in accordance with the decision of the tribunal.

(f) The costs of any proceedings under this subsection, including the payments, if any, made to witnesses, shall be paid from the contributions referred to in paragraph (g) of sub-section (1) of section *fourteen* of this Schedule.

Amend-
ment, Am-
plification,
Replace-
ment, or Ex-
tension of
Period of
Agreement
at instance
of Parties.

32. (1) Whenever any agreement made binding under section *twenty-nine* of this Schedule is amended or amplified or replaced by a further agreement, the provisions of that section shall apply in respect of any such further agreement.

(2) Whenever the Ministers have, under section *twenty-nine* of this Schedule, made an agreement binding and the industrial council concerned requests them to extend the period for which such agreement shall remain binding, the Ministers may, if they deem it expedient, extend that period by further notice in the *Gazette* to a date which they shall therein specify.

Appeal
against
Refusal of
or Expulsion
from
Membership
of the
Statutory
Union.

33. (1) If the statutory union refuses to accept any person as a member or expels him from membership, such person shall have the right during a period of fourteen days after he has received notice of such refusal or expulsion to appeal in writing to the Ministers against such refusal or expulsion.

(2) On receipt of notice of appeal given in terms of sub-section (1) of this section, the Ministers shall in writing require the secretary of the statutory union to furnish to them within such period as they may state, reasons for the refusal of or expulsion from membership. If the secretary

of the statutory union fails to comply with the terms of such request he shall be guilty of an offence.

(3) If on receipt of such reasons and after such further inquiry, if any, as they may deem necessary, the Ministers are not satisfied that the refusal to accept the appellant as a member or the expulsion of the appellant from membership was for reasonable cause, they may order the statutory union to accept or reinstate the appellant as a member. If the statutory union fails to obey an order given by the Ministers in terms of this subsection it shall be guilty of an offence.

34. (1) The Railways shall not declare or take part in a lock-out or in the continuation of a lock-out, and no employee or registered or statutory trade union or other person shall declare or take part in a strike or the continuation of a strike until the conditions which are specified in subsection (2) of this section and which are applicable to the occasion have been fulfilled.

Prohibition
of Lock-out
or Strike
in Certain
Circumstances.

(2) The conditions to be fulfilled for the purposes of sub-section (1) of this section are as follows:—

- (a) If any agreement, recommendation or award has under this Schedule been made binding upon the Railways and any employee or other person concerned and any provision of such agreement, recommendation or award deals with the matter giving occasion for the lock-out or strike, the period for which that agreement, recommendation or award has been made binding must have expired;
- (b) if the conditions of paragraph (a) of this sub-section do not apply and there is an industrial council representing the interests of the employees concerned, the matter giving occasion for the strike or lock-out must have been submitted to, considered and reported on by such industrial council;
- (c) if the conditions of paragraph (b) of this sub-section apply and, in addition, the matter giving occasion for the strike or lock-out is a dispute referred to in paragraph (a) or (b) of sub-section (1) of section *twenty-five* of this Schedule, the award of the arbitrator, arbitrators or umpire must have been published.

(3) Notwithstanding anything to the contrary contained in this Schedule, when any award or portion or extract of any award made by an arbitrator appointed under section *twenty-five* of this Schedule has been published by the Ministers in terms of this Schedule, the employees who, or the trade unions or the Railways which, are parties to the dispute may, within twenty-eight days of such publication, inform the Ministers in writing of their intention not to be bound by such award, and after the receipt of such notification by the Ministers such employees or the Railways or trade unions shall not be bound by such award, and may lawfully declare or take part in a strike or the continuation of a strike or in a lock-out or in the continuation of a lock-out.

(4) Any person contravening the provisions of this section or inciting any other person to do so shall be guilty of an offence.

Evidence.

35. Proof of the publication in the *Gazette* of any notice under section *twenty-nine*, *thirty-one* or *thirty-two* of this Schedule or of the making of any award by an arbitrator, arbitrators or umpire appointed under this Schedule shall be conclusive proof that all the provisions of this Schedule in respect of matters precedent and incidental to the entering into of an agreement of the making of an award or the publication of such a notice, as the case may be, have been complied with.

Special Defects and Irregularities not to Invalidate Certain Matters.

36. Notwithstanding anything contained in this Schedule or any other law—

- (a) any defect in or omission from the constitution of any trade union or industrial council; or
- (b) any irregularity in the election or appointment of any representative on an industrial council, or of any alternate of any representative, or any chairman or vice-chairman or other person presiding over any meeting of such a council or committee of such a council, or of any mediator, arbitrator or umpire; or
- (c) the existence of any vacancy in the membership of any industrial council;

shall not invalidate—

- (i) the constitution or the registration of any trade union or industrial council; or
- (ii) any agreement or award which, but for that defect, omission, irregularity or vacancy, would have been binding in terms of this Schedule; or

(iii) any act of any industrial council or committee of such a council or of any mediator, arbitrator or umpire.

37. (1) Any person who considers himself aggrieved by a decision of the Ministers under the powers conferred upon them by any of the under-mentioned provisions of this Schedule may, within thirty days after the decision became known to him, appeal against that decision to the High Court. The following are the provisions of this Schedule to which this sub-section refers: section *three*, section *four*, sub-section (3) of section *seven*, and sub-section (3) of section *thirty-three*.

Appeals
from
Decisions
of the
Ministers.

(2) On such appeal the High Court shall confirm the decision of the Ministers or shall give such decision as in its opinion the Ministers ought to have given: and the decision of the High Court, shall, for the purposes of this Schedule, be deemed to be the decision of the Ministers.

38. Any person who is convicted of an offence under this Schedule shall be liable to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment for a period not exceeding one year.

Penalties.

39. (1) The High Commissioner, after consultation with the Governor of Southern Rhodesia and the Governor of Northern Rhodesia may make such regulations as he may deem expedient to give force and effect to this Schedule and for its better administration.

Regulations.

(2) Without prejudice to the generality of the foregoing powers, regulations may provide for the following matters:—

- (a) The procedure to be observed by an industrial council, a mediator or an arbitrator or arbitrators and umpire;
- (b) the method of recovery by or on behalf of an industrial council of contributions referred to in paragraph (g) of sub-section (1) of section *fourteen* of this Schedule;
- (c) allowances which may be paid to witnesses summoned before an industrial council or a committee thereof, the special industrial council or a sub-committee thereof, an arbitrator or arbitrators and umpire;
- (d) all matters which by this Schedule are required or permitted to be prescribed by regulation.