

PENAL CODE (AMENDMENT) ACT, 1985

No. 12



of 1985

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Insertion of section 320A in Cap. 08:01
3. Statute ceasing to apply

An Act to amend the Penal Code

Date of Assent: 13.5.85

Date of Commencement: 24.5.85

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Penal Code (Amendment) Act, 1985. Short title

2. The Penal Code is hereby amended by inserting immediately after section 320 thereof, the following new section — Insertion of section 320A in Cap. 08:01

320A. (1) Subject to the provisions of this section, no person shall enter a coach or other vehicle of the railways in the country for the purpose of travelling therein as a passenger unless he has with him a valid pass or ticket.

“Travelling on train without free pass or a ticket prohibited

(2) If a passenger travels in a train without having a free pass or valid ticket with him, or being in or having alighted from a train, fails or refuses to present for examination or to deliver up his free pass or ticket immediately on being required to do so, he shall be liable to pay on the demand of any authorized servant, the excess charge determined by the General Manager.

(3) A passenger on whom a demand is made to pay the excess charge in accordance with the provisions of subsection (2) shall be liable to pay in addition to the ordinary fare for the distance which he has travelled or is travelling or, if there is any doubt as to the station from which he originally started, the fare from the

station from which the train originally started or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary fare from the place where the tickets were examined or, if they have been examined more than once, the place where they were last examined.

(4) If a passenger travels or attempts to travel in a portion of a train of a higher class than that for which he has obtained a free pass or ticket, or travels beyond the place authorized by his free pass or ticket, he shall be liable to pay on the demand of any authorized servant, the excess charge determined by the General Manager in addition to any difference between any fare paid by him and the fare in respect of such journey as he has made:

Provided that the excess charge shall in no case exceed —

- (i) if the liability to pay it arises under subsections (2) and (3), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under those subsections, or
- (ii) if the liability to pay arises under this subsection, the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made:

Provided further that the General Manager may prescribe particular circumstances under which no excess charge shall be demanded.

(5) If any person wilfully refuses to pay the amounts due by him under this section to any servant demanding such amount, it shall be lawful for any station master or other authorized employee to arrest that person without warrant and detain him in custody and bring him as speedily as possible before a court having jurisdiction to be dealt with according to law on a charge of such wilful refusal; and he shall be liable on conviction to undergo corporal punishment not exceeding six strokes or to a fine not exceeding P100 or to both:

Provided that no person shall be arrested or detained without a warrant unless there is reasonable ground for believing that except by the arrest of the person offending he could not be found or made answerable to justice without delay, trouble or expense.

(6) It shall be the duty of the court passing any sentence under this section to impose, in addition to the sentence, a further fine equal to the amount payable to the railways for the fare and excess charge payable or due by the accused in respect of the journey performed by him in the class in which he was travelling, and such court may, in addition order that if on the payment of the fine or at the expiration of the sentence the further fine has not been paid, the person convicted shall be imprisoned for a further period not exceeding one month.

(7) The railways shall refund any fare or difference in fare paid under the provisions of this section, provided that —

(a) application for the refund is made within fourteen days from the date of payment; and

(b) the applicant had at the time he made the payment a valid subsisting ticket or free pass available for the journey on which he was found without a ticket, or some bona fide reason for being without such ticket or free pass.

(8) For the purposes of this section the "General Manager" means the person designated as General Manager of the Railways or performing the functions of the General Manager."

3. The provisions of the Railway Regulations Act, 1905 of the Cape Colony which was made applicable to Bechuanaland Protectorate by the Railway Authority Proclamation (Cap. 164) shall, in so far as they relate to the prohibition of travelling on trains without free pass or ticket, cease to apply to Botswana.

Statute
ceasing to
apply

PASSED by the National Assembly this 24th day of April, 1985.

C.G. MOKOBI,
Clerk of the National Assembly.