

Zambia

## Rhodesia Railways Act, 1949

### Chapter 463

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# Rhodesia Railways Act, 1949

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## Zambia

# Rhodesia Railways Act, 1949

## Chapter 463

Commenced on 1 October 1949

*[This is the version of this document at 31 December 1996.]*

*[25 of 1949; 54 of 1951; 8 of 1953; Federal Acts 18 of 1955; 12 of 1960; 39 of 1963; Federal Government Notice 297 of 1961; Government Notices 427 of 1963; 318 of 1964; 497 of 1964; Statutory Instruments 154 of 1965; 167 of 1985]*

**An Act to empower the Rhodesia Railways to provide for the operation and maintenance of rail transport within Zambia; to provide for the acquisition by and transfer to them of the undertakings, property, obligations and liabilities within Zambia of the Rhodesia Railways Limited; to exempt their receipts and accruals from income tax; to provide for the regulation and control of their charges; to provide for the recognition of trade unions of their employees and for the prevention and settlement of disputes between them and their employees and for the regulation by agreement and arbitration of conditions of employment and other matters of mutual interest to them and their employees; and for other purposes connected with the matters aforesaid.**

*[See section 89 of the Zambia Railways Act (Cap. 767 of the old edition) which empowers the Minister to amend, modify or repeal the provisions of this Act.]*

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 Northern Rhodesia;

NOW, THEREFORE, be it enacted by the Governor of Northern Rhodesia with the advice and consent of the Legislative Council thereof, as follows:

## Part I – Preliminary

### 1. Short title

This Act may be cited as the Rhodesia Railways Act, 1949.

### 2. Interpretation

In this Act, unless the context otherwise requires—

"appointed day" means the 1st November, 1949;

"Authority" means the Higher Authority for Railways constituted by the Order in Council;

"Board" means the board of management of the Railways appointed in terms of the Order in Council;

"**Company**" means the Rhodesia Railways Limited aforesaid;

"**goods**" includes animals and vehicles and all things capable of being carried on a railway;

"**Governments**" means the Governments of Zambia and Southern Rhodesia;

"**Order in Council**" means the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963;

[App. 1]

"**Railways**" means the Rhodesia Railways referred to in the Order in Council;

"**territories**" means collectively the Colony of Southern Rhodesia, the Republic of Zambia and the Republic of Botswana.

[As amended by Federal Act [No. 18 of 1955](#), G.N. No. 427 of 1963 and S.I. No. 154 of 1965]

## Part II – The Rhodesia Railways

### 3. Headquarters of the Railways

The Headquarters of the Railways shall be at Bulawayo or at such other place as the Authority may from time to time appoint.

[G.N. No. 427 of 1963]

### 4. General duties of the Railways

It shall be the general duty of the Railways so to exercise their powers under this Act 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 territories 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 territories. 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 territories by means of cheap and efficient transport. The Railways shall at all times endeavour to produce a reasonable surplus on their net revenue account.

[As amended by G.N. No. 427 of 1963]

### 5. Powers of the Railways

- (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 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 territories and within any country adjacent to any of the territories and to carry on all such ancillary business as can suitably be carried on in conjunction with the business of transport.
- (2) Subject to the provisions of this Act, the powers conferred by subsection (1) include power—
  - (a) to acquire the whole undertaking of the Company and all and several the property of the Company whatsoever and wheresoever situate, 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 fulfill 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 connection with any of their lines for the time being, or calculated directly or indirectly to benefit them and to acquire rights over or in connection 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 territories to any other place, whether in the territories or elsewhere;
- (g) to store goods within the territories and within any country adjacent to any of the territories, 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 territories and within any country adjacent to any of the territories 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 territories 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 connection 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 subsection (1);
  - (s) to construct, manufacture, purchase, maintain and repair anything required for the purpose of any of the activities of the Railways specified in subsection (1);
  - (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 territories 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 any of the territories;
  - (w) to appoint a liquidator for the purposes of the dissolution of the Railways and to give to such liquidator such powers as may be necessary for the performance of his functions;
  - (x) to transfer to the Governments such assets and liabilities as may be determined by the liquidator.
- (3) The Railways may dispose whether absolutely or for a term of years of any part of their undertaking or any property which in their opinion is not required by them for the discharge of their duties under this Act, including, without prejudice to the generality of the preceeding words, any part of their undertakings which is carried on outside the territories and any property which is situated outside the territories, and whether the same has been transferred to the Railways or whether it remains still vested in the name of the company.
- (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 any of the territories or in any country adjacent to any of the territories.
- (5) The provision of this section shall not be construed as limiting any power of the Railways conferred by any subsequent provision of this Act.

*[As amended by G.N. No. 427 of 1963 and S.I. 167 of 1985]*



### Part III – Acquisition of Company's property

#### 6. Acquisition of Company's property

- (1) On the appointed day all the property of the Company in the Protectorate of Northern Rhodesia shall vest in the Railways, and all public registries in the former Protectorate of Northern Rhodesia and in Zambia 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 Railways 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 Railways;
  - (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 Act, the Railways shall succeed to all the rights conferred and be subject to all the obligations imposed upon the Company by any written law and every such law shall, *mutatis mutandis*, apply to the Railways. The provisions of paragraphs (b), (c), (d) and (f) of subsection (2) 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 Railways 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.

- (6) Nothing in this section contained shall be so construed as to compel the Railways to take transfer into their own name of any property situated outside the territories of which they may decide to dispose in the exercise of the powers conferred upon the Railways by subsection (3) of section five.

*[As amended by G.N. No. 427 of 1963 and S.I. No. 154 of 1965]*

## **Part IV – The Higher Authority**

### **7. Procedure of the Authority**

- (1) Subject to the provisions of this Act, the Authority shall determine its own procedure.
- (2) No decision of the Authority shall have effect unless it is unanimous.

*[G.N. No. 427 of 1963]*

### **8. Functions of the Authority**

Subject to the provisions of this Act, it shall be the function 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 Act, the Board may not act without the prior consent and approval of the Authority; and
- (c) to assist the Governments in the orderly dissolution of the Railways and to give the Board such directives as are necessary or expedient for giving effect or enabling effect to be given to the dissolution.

*[As amended by G.N. No. 427 of 1963 and S.I. No. 167 of 1985]*

## **Part V – The Board**

### **9. Tenure of office and other conditions of service of members of Board**

- (1) Subject to the provisions of this Act—
- (a) the chairman of the Board shall hold office for such term as the Authority shall determine at the time of his appointment;
- (b) the other members of the Board shall hold office for a period of three years from the date of their appointment or such shorter period as may be specified in their instrument of appointment:

Provided that the chairman and any other member of the Board may resign his office by notice in writing under his hand given to the Authority.

- (2) A member on vacating his office at the expiration of the term thereof shall be eligible for reappointment.
- (3) The Governments shall designate as a deputy chairman one of the members of the Board appointed in terms of the Order in Council.
- (4) Every member of the Board shall receive from the funds of the Railways such remuneration as the Authority may at the time of his appointment determine, and such fees and allowances as the Authority may from time to time prescribe:

Provided that if a member of the Board is also a member of the public service, he shall receive from the funds of the Railways no remuneration, fees or allowances.

*[G.N. No. 427 of 1963 as amended by S.I. No. 154 of 1965]*

## 10. Qualifications for membership of Board

- (1) Each member of the Board shall be chosen on account of his wide experience and proved capacity in general administration or in agriculture, commerce, industry, mining, transport or financial affairs or in the administration or the organisation of workers.
- (2) A person shall be disqualified from being appointed or being a member of the Board so long as he is a member of the Legislative Assembly of Southern Rhodesia or a member of the National Assembly of Zambia.

*[G.N. No. 427 of 1963 as amended by G.N. No. 318 of 1964]*

## 11. Disqualifications for membership of Board

- (1) If the Authority is satisfied that a member of the Board—
  - (a) is disqualified for membership of the Board; or
  - (b) has become insolvent or has made a composition or arrangement with his creditors; or
  - (c) has absented himself from meetings of the Board for a continuous period of six months, except with the prior consent of or some reason approved by the chairman; or
  - (d) is incapacitated by physical or mental illness; or
  - (e) is guilty of misbehaviour; or
  - (f) is otherwise unable or unfit to discharge the duties of a member;the Authority may declare his office as a member of the Board to be vacant and shall notify the fact in such manner as they may think fit, and thereupon the office of that member shall become vacant.
- (2) The Board may continue to act notwithstanding any vacancy in their number.

*[G.N. No. 427 of 1963]*

## 12. Chief office of Board

The chief office of the Board shall be situated at the headquarters of the Railways.

*[G.N. No. 427 of 1963]*

## 13. Procedure of Board

- (1) The quorum of the Board shall be five.
- (2) At all meetings of the Board the chairman, or in his absence a deputy chairman, shall preside.
- (3) 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.
- (4) The person appointed by the Board in terms of subsection (1) of section thirty-seven to perform the functions of the office of general manager shall attend all meetings of the Board and shall be entitled to speak but not to vote on any matter under discussion:

Provided that the chairman of the Board may require him to withdraw from any meeting if the chairman considers that he should not be present during the discussion of any matter.

- (5) 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.
- (6) 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.

*[As amended by G.N. No. 427 of 1963]*

#### **14. Functions and powers of Board**

- (1) It shall be the function of the Board, subject to the provisions of this Act, to conduct and manage the business of the Railways.
- (2) For the due performance of their function the Board shall, subject to the provisions of subsection (3), be entitled to exercise all the powers conferred upon the Railways by this Act and to delegate such functions as they deem fit.
- (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;
  - (d) any construction of a new railway;
  - (e) the appointment of a liquidator for the purposes of dissolution of the Railways; and
  - (f) the transfer of assets and liabilities of the Railways pursuant to dissolution.

*[As amended by S.I. No. 167 of 1985]*

#### **15. \*\*\***

*[Obsolete]*

### **Part VI – Finance**

#### **16. Loan indebtedness**

- (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 an amount equal to 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 1st 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 shall be determined by the said Government at the time of the repayment of that borrowing.

\*Printed as a supplement at the end of this Act.

- (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 pay to the Government of Southern Rhodesia in the twelve months ending the 30th September, 1964, the sum of nine hundred thousand pounds and thereafter in each similar period of twelve months the sum of six hundred thousand pounds as contributions to the sinking fund established in connection with the borrowing referred to in subsection (2) or any sinking fund established in connection with any loan raised to repay that borrowing. In consideration of these payments and of the sinking fund payments made by the Railways under this subsection before the 15th November, 1963, the Railways shall be entitled to the eventual credit or benefit of the portion of those sinking funds contributed as aforesaid and fifteen-sixteenths of the interest earned by the investment of those sinking funds. 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 subsection, 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, subject to the provisions of section seventeen, be a first charge on all the property and assets of the Railways.
- (6) For the purposes of this section, "loan indebtedness"—
  - (a) in respect of the period ending on the date of the repayment of the borrowing referred to in subsection (2), means thirty million pounds;
  - (b) in respect of the period beginning on the day next following the date of the repayment of the borrowing referred to in subsection (2), means a sum equal to the difference between thirty million pounds and the amount standing to the credit of the Railways in the sinking fund established in connection with that borrowing on the date of its repayment.

[As amended by No. 54 of 1951, Federal Act [No. 39 of 1963](#) and G. N. No. 427 of 1963]

## 17. Loan indebtedness to Government of Zambia

- (1) The amount of the liability incurred by the Government of the former Protectorate of Northern Rhodesia in raising, as nearly as may be, the sum of seven million five hundred thousand pounds by way of loan under the provisions of the Specific Loan (Rhodesia Railways) Act, for the purpose of lending such sum to the Railways, which liability has, with effect from the 24th October, 1964, become a liability of the Government of Zambia and is hereinafter in this section referred to as "the Zambia loan indebtedness", shall be deemed to be a debt due by the Railways to the Government of Zambia.
- (2) The Railways shall pay to the Government of Zambia on the Zambia loan indebtedness interest on the same conditions and reckoned at the same rate of interest as is from time to time payable by such Government in the borrowing of the said sum or any part thereof, under the Specific Loan (Rhodesia Railways) Act, or as shall be determined by such Government at the time of the repayment of that borrowing. The date on which the Railways shall commence to pay interest shall be the same date as that on which interest becomes payable by such Government by virtue of the aforementioned borrowing.

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- (3) The Railways shall further pay half-yearly to such Government the management expenses and other duties and expenses, not included in the Zambia loan indebtedness, payable by such Government in respect of any loan or of any portion of any loan relating to the Zambia loan indebtedness.
- (4) The Railways shall pay to the Government of the Protectorate of Northern Rhodesia, in two equal half-yearly instalments, the sum of seventy-seven thousand three hundred pounds in the financial year ending the 30th June, 1964, and shall pay to the Government of Zambia the sum of one hundred and fifty-four thousand six hundred pounds in each financial year thereafter as contributions to the sinking fund established in connection with the borrowing referred to in subsection (2) or any sinking fund established in connection with any loan raised to repay that borrowing. In consideration of these payments and of the sinking fund payments made by the Railways under this subsection before the 15th November, 1963, the Railways shall be entitled to the eventual credit or benefit of such contributions to those sinking funds and of the interest earned by the investment of such contributions. When the aggregate amounts of the sinking fund payments made by the Railways to such Government, together with the interest to be credited to the Railways, in terms of this subsection, reaches the amount of the Zambia loan indebtedness, the debt of the Railways shall be deemed to have been discharged and the amount of seven million five hundred thousand pounds shall then be transferred to the capital account of the Railways.
- (5) The amount of the Zambia loan indebtedness 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, and shall rank *pari passu* with the charge created by subsection (5) of section sixteen.
- (6) For the purposes of this section, "Zambia loan indebtedness"—
  - (a) in respect of the period ending on the date of the repayment of the borrowing referred to in subsection (2), means the amount of the liability of the Government of Zambia referred to in subsection (1);
  - (b) in respect of the period beginning on the day next following the date of the repayment of the borrowing referred to in subsection (2), means a sum equal to the difference between the amount of the liability of the Government of Zambia referred to in subsection (1) and the amount standing to the credit of the Railways in the sinking fund established in connection with that borrowing on the date of its repayment.

[No. 54 of 1951 as amended by Federal Act [No. 39 of 1963](#) and S.I. No. 154 of 1965]

[[Cap. 370](#)]

## 18. Reserve accounts

- (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 Railways (Commission) Act, Chapter 175 of the 1948 Edition of the Laws, repealed by this Act, 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 Railways (Commission) Act, Chapter 175 of the 1948 Edition of the Laws, repealed by this Act. The Board may, with the approval of the Authority, make appropriations to the rates and wages stabilisation account in any financial year, and shall whenever the amount to the credit of that account falls below two and one-half million pounds make appropriations thereto in such amount as the Authority may approve:

Provided that, notwithstanding anything contained in this Act, the rates and wages stabilisation account shall in no circumstances be raised to an amount exceeding four million pounds.

- (3) There shall be established a special reserve account into which shall be paid the amounts referred to in subsection (3) or (4) of section twenty-four, as the case may be. Such amounts may be used—
- (a) subject to the general approval of the Authority, for the repayment of capital loans not otherwise provided for;
  - (b) subject to the special approval of the Authority, for other authorised capital expenditure;
- and any amounts so used shall be transferred to the capital account of the Railways.
- (4) 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 subsection (1) (d) of section twenty-four or previously existing in the accounts of the Company under similar or other headings to any other reserve accounts or funds:

Provided that no transfer shall be made under this subsection to or from the special reserve account established under subsection (3).

*[As amended by No. 8 of 1953]*

## 19. Borrowing powers

The Board may, with the approval of the Authority, borrow money by the issue of debentures or by such other appropriate means as the Authority may approve for all or any of the following purposes:

- (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;
- (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 paragraph (d) 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.

*[As amended by G.N. No. 427 of 1963]*

## 20. Temporary borrowing powers

The Railways may 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 a portion of the working expenses of the undertaking.

*[As amended by G.N. No. 427 of 1963]*

## 21. Investments

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.



## 22. Estimates

- (1) The Board shall, before the commencement of each financial year, send to the Authority for information only and in such detail as the Authority may require, budget estimates of the anticipated revenue and expenditure on revenue account for that year. The Authority shall likewise be informed of any subsequent proposals for materially amending such estimates. In the event of the estimates or subsequent amendments thereof including an estimate of revenue which would require the Board, in terms of section twenty-seven to seek the Authority's approval of an increase in rates, such estimates, or the estimates as amended, will require the approval of the Authority. The estimates so sent, amended or approved shall be the authorised revenue and expenditure budget of the Railways for the financial year to which they relate.
- (2) The Board shall, before the commencement of each financial year, submit to the Authority for their approval, and in such detail as the Authority may require, a budget indicating the capital expenditure to be incurred in that year, the amount to be provided from the Railways' own resources and the amounts to be sought from other resources.

[G.N. No. 427 of 1963]

## 23. Estimates for development

The Railways may, whenever the Railways consider it expedient to do so, and shall, whenever the Authority require the Railways to do so, prepare and submit to the Authority, in accordance with the directions of the Authority, a plan in which the Railways shall show—

- (a) the expenditure from capital and revenue accounts estimated to be required for development and the replacement of assets during the period to which the plan relates; and
- (b) the proposed resources for the financing of the plan.

[G.N. No. 427 of 1963]

## 24. Allocation of revenue receipts

- (1) The receipts of the Railways on revenue account in any financial year shall be applied in defraying all expenses properly chargeable against revenue which shall, *inter alia*, include sums required for—
  - (a) all working expenses of the Railways, including the salaries and expenses of the Board;
  - (b) making payments to the Government of the Bechuanaland Protectorate in terms of subsection (2) as long as the provisions of that subsection are applicable;
  - (c) 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 Railways (Commission) Act, Chapter 175 of the 1948 Edition of the Laws, repealed by this Act, where such pensions are not chargeable to a pension fund, and making adequate contributions to pension or provident funds;
  - (d) making due provisions for maintenance, renewals, depreciation, appropriations to the rates and wages stabilisation account in accordance with the provisions of subsection (2) of section eighteen and appropriations to improvement or betterment accounts; and
  - (e) paying interest, sinking fund and other loan charges.
- (2) From the receipts of the Railways there shall be paid to the Government of the Bechuanaland Protectorate for a period of six years a sum of one hundred and forty thousand pounds in respect of each period of twelve months commencing with the 1st April, 1958:

Provided that at the end of the said period of six years the Governments and the Government of the Bechuanaland Protectorate may agree to a continuation of such payments or to the payment of



such greater or lesser sums for such further period as the Governments and the Government of the Bechuanaland Protectorate may determine.

- (3) The following provisions shall apply during the period in which a fixed sum is paid to the Government of the Bechuanaland Protectorate in terms of subsection (2):

From the balance, if any, of the revenue receipts available after meeting the charges in subsection (1), there shall be appropriated to the special reserve account referred to in subsection (3) of section eighteen such sum as the Authority may approve.

- (4) The following provisions shall apply if payments to the Government of the Bechuanaland Protectorate in terms of subsection (2) cease:

From the balance, if any, of the revenue receipts available after meeting the charges in subsection (1), there shall be paid to the Government of the Bechuanaland Protectorate a sum equal to the same proportion of an amount of six hundred thousand pounds or the amount of such balance, whichever is the lesser, as the proportion 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 the Bechuanaland Protectorate bears to the total net operating revenue (adjusted as aforesaid) earned in all the territories. From the resulting balance, there shall be appropriated to the special reserve account mentioned in subsection (3) of section eighteen such sum as the Authority may approve.

- (5) The proceeds of the sale of any part of the undertakings or any property of the Railways under the provisions of subsection (3) of section five 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.

*[No. 8 of 1953 as amended by Federal Act [No. 18 of 1955](#) and G.N. No. 427 of 1963]*

## 25. Meeting of deficiencies

If in any year the receipts of the Railways are not sufficient to meet the charges specified in subsection (1) of section twenty-four, the deficiency shall be met from the moneys in the rates and wages stabilisation account. If the moneys in that account are insufficient to meet the whole of such deficiency, one-half of the shortfall shall be made good by the Government out of the general revenues of the Republic which are hereby appropriated to the purpose.

*[G.N. No. 427 of 1963 as amended by S.I. No. 154 of 1965]*

## 26. Allocation of surplus

Any surplus in any year, after meeting the charges specified in section twenty-four, shall be applied in the first place to the reimbursement of any payments made by the Governments in respect of any shortfall such as is referred to in section twenty-five in the proportion of such payments and the balance of any such surplus shall be allocated in such manner as the Railways, with the approval of the Authority, may determine.

*[G.N. No. 427 of 1963]*

## 27. Variations of rates in event of surplus or deficit

- (1) Whenever the Board consider 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 subsection (1) of section twenty-four, the Board shall, subject to the approval of the Authority and to any instruction which the Authority may give under the provisions of subsection (2), 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 are, in terms of subsection (1), 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 as will be reasonably calculated to provide a balance for meeting the whole or such portion as the Authority may specify of the payment and appropriations under subsections (3) and (4) of section twenty-four.

*[As amended by No. 8 of 1953, Federal Act [No. 18 of 1955](#) and G.N. No. 427 of 1963]*

## 28. Exemption from tax

The receipts and accruals of the Railways shall be exempt from any tax on income or profits imposed by any written law.

*[As amended by G.N. No. 427 of 1963 and S.I. No. 154 of 1965]*

## 29. Accounts and audit

- (1) The Board shall 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.
- (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 Railways' 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 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.

*[As amended by G.N. No. 427 of 1963]*

## 30. Reports

- (1) 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 section twenty-nine and the report of the auditors thereon.
- (2) The Minister shall lay a copy of every such report, statement of accounts and auditors' report before the National Assembly.
- (3) The Minister shall in addition lay a copy of any statement or explanation made under subsection (4) of section twenty-nine before the National Assembly.

*[As amended by Federal Act [No. 18 of 1955](#), G.N. No. 427 of 1963 and G.N. No. 318 of 1964]*

## Part VII – Rates

### 31. Railways to fix rates and conditions of carriage

- (1) The Railways shall, subject to the provisions of this Act, 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 subsection (1), the Railways shall—
  - (a) give reasonable notice to the public of the proposed alterations; and
  - (b) provide in such notice that objections may be made to an officer of the Railways specified in such notice.
- (3) Notwithstanding the provisions of paragraph (a) of subsection (1), any person who has made an unsuccessful application to the Railways for a modification of charges or an unsuccessful objection to such specified officer against any proposed alterations of which reasonable notice has been given in terms of paragraph (a) of subsection (2) may appeal from the decision of the specified officer to the Board, who may uphold, reverse or vary the decision of the specified officer. The decision of the Board shall be final.

*[As amended by G.N. No. 427 of 1963]*

### 32. Undue preference

- (1) In respect of the carriage of passengers and goods on any line of railway, the Railways shall not, under the powers conferred by this Act, 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 they subject any particular territory, district, person, company or any particular description of traffic 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 Zambia 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 Railways.

*[As amended by Federal Act [No. 12 of 1960](#) and G.N. No. 427 of 1963]*

### 33. Appeals against undue preference

- (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 may appeal to the Board.

- (2) Any appellant who is dissatisfied with any decision of the Board given in terms of subsection (1) may give notice in writing to the Authority that he wishes to appeal from any such decision to a Rates Tribunal to be constituted in terms of section thirty-four and shall, in any such notice, set out clearly, specifically and in numbered sequence the grounds of his appeal. The Authority shall upon receipt of any such notice arrange for a Rates Tribunal to be constituted to hear the appeal.

*[As amended by Federal Act [No. 12 of 1960](#) and G.N. No. 427 of 1963]*

### 34. Provisions as to Rates Tribunals

- (1) When the constitution of a Rates Tribunal is necessary in terms of subsection (2) of section thirty-three, the Authority shall appoint to it three members of whom—
- (a) one member, who shall be president of the Tribunal, shall be a person who is or has been a Judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the British Commonwealth;
  - (b) one member shall be a person with railway experience, especially in regard to rates; and
  - (c) one member shall be a person with business experience.
- (2) The powers, rights and privileges of a Rates Tribunal in an appeal shall be the same as those conferred upon a commissioner by the Inquiries Act, and the provisions of that Act shall, *mutatis mutandis*, apply in relation to an appeal and to a person summoned to give evidence or giving evidence at the appeal:

Provided that any expenses of witnesses allowed in terms of that Act shall be met by the Railways.

*[Cap. 41]*

- (3) Subject to the provisions of this Act, the procedure on an appeal to a Rates Tribunal shall be as determined by the president.
- (4) The Railways may appear as a party in any proceedings before a Rates Tribunal and the president may direct that appeals of which notice has been given in terms of subsection (2) of section thirty-three and which in his opinion are related directly to the same subject-matter shall be heard in the same proceedings.
- (5) In proceedings before a Rates Tribunal the parties may appear in person or be represented and appear by a legal practitioner entitled to audience before a subordinate court in any territory.
- (6) A Rates Tribunal may order that the costs of and incidental to any proceedings before it shall be paid in whole or in part, as the Tribunal may deem just, by any appellant or other party appearing before it.
- (7) The Authority may by rules published in the *Gazette* regulate generally the practice and procedure of a Rates Tribunal.
- (8) The Authority may appoint a secretary and such other persons as they may deem necessary to assist with the work of a Rates Tribunal and there may be paid to its members, secretary and any such persons such remuneration and allowances as the Authority may determine.
- (9) The expenses incurred by a Rates Tribunal in the exercise of its functions and such sums as may be payable in terms of subsection (8) shall be met by the Railways.

*[Federal Act [No. 12 of 1960](#) as amended by G.N. No. 427 of 1963 and S.I. No. 154 of 1965]*

### 35. Consideration and recommendation of Rates Tribunal

- (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.

*[As amended by Federal Act [No. 12 of 1960](#) and G.N. No. 427 of 1963]*

### 36. Saving of existing contracts

Nothing in this Act 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 1st September, 1926; or
- (b) contracts to grant exceptional rates entered into by the Company, or by the Mashonaland Railway Company Limited, before the 19th July, 1935, with the consent of the Railway Commission established under the Railways (Commission) Act, Chapter 175 of the 1948 Edition of the Laws; 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 Railways (Commission) Act, Chapter 175 of the 1948 Edition of the Laws;

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

## Part VIII – Conditions of employment

### 37. Power of Railways in regard to staff

- (1) The Railways shall have power to appoint and employ a person to perform the functions of the office of general manager and such staff and employees as may be requisite for the undertakings of the Railways, and to discharge and dismiss them.
- (2) The Railways 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.

*[As amended by G.N. No. 427 of 1963]*

### 38. Machinery for negotiation between Railways and employees

- (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 shall apply to the Railways and to their undertakings within Zambia.
- (2) The law in force in Zambia 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.

### 39. Pensions

- (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 Railway Commission established under the Railways (Commission) Act, Chapter 175 of the 1948 Edition of the Laws, 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 subsection (1), 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 Act 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 subsection (2) 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 judgement 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.

## Part IX – Railway construction

### 40. New construction

- (1) Whenever the construction of any new railway or of any other work in connection with any new or any existing railway has been proposed and approved in terms of this Act and any land in Zambia is likely to be needed by the Railways for the purpose of such new railway or other work, the Board may notify to the Minister 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 Minister shall give public notice of the substance of such notification in the *Gazette* and in a newspaper circulating in the area of the proposed new railway or other work. Thereupon such new railway or other work shall be deemed to have been included in the Schedule to the Rhodesia Railways Act (hereinafter referred to as the said Act), and 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 by the said Act.

*[Cap. 363]*

- (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 Minister and in such other places as the Minister may require within such time as the Minister may appoint.
- (4) Upon the completion of any such new railway or other work, the provisions of section nine of the said Act shall apply to such new railway or other work.
- (5) The Railways shall further have the right upon all land referred to in section six of the said Act to take such private water, as defined in the Water Act, 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 subsection shall confer any right to take private water which has been impounded by any person other than the Railways.

*[Cap. 198]*

- (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.

*[As amended by No. 8 of 1953, Federal Act No. 18 of 1955 and G.N. No. 427 of 1963]*

### 41. Level crossings

- (1) On and after the commencement of this Act, 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 Minister whose decision shall be final.

- (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 Minister for determination of the matter.

- (3) On such application the Minister shall cause inquiry to be made and may, if he deems 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.

*[As amended by Federal Act [No. 18 of 1955](#) and G.N. No. 427 of 1963]*

## 42. Road and rail crossings

- (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 considers 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 Minister for determination of the matter.
- (2) On such application the Minister shall cause inquiry to be made and may, if he deems fit, direct that such bridge or subway shall be constructed and shall in each case decide and direct 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.

*[As amended by Federal Act [No. 18 of 1955](#) and G.N. No. 427 of 1963]*

## Part X – Miscellaneous

### 43. By-laws

- (1) The Railways shall have power to make any by-laws which under the laws of Zambia the Company or the directors thereof would have been empowered to make if the Company had continued to own and operate the undertakings of the Railways, and accordingly—
  - (a) section three of the Regulation of Railways Act shall apply as if the words "by its board of directors or by its manager if such board resides beyond the limits of Zambia and of Southern Rhodesia" were deleted;  
*[Cap. 453]*
  - (b) sections three and four of the Regulation of Railways Act shall, except as provided in paragraph (a), apply as if the Railways were a company.  
*[Cap. 453]*
- (2) With a view to ensuring uniformity in all territories of the by-laws relating to the undertakings of the Railways, the Railways shall, in the case of every by-law made by them which under the laws of



Zambia is of no force and effect until approved or confirmed by the Minister, submit such by-law to the Authority for scrutiny before submitting it to the Minister 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 Act, shall remain in force until altered or repealed in terms of this section.

*[As amended by F.G.N. No. 297 of 1961 and G.N. No. 427 of 1963]*

#### 44. Indemnity for Railway Commission and Company

The Railway Commission established under the Railways (Commission) Act, Chapter 175 of the 1948 Edition of the Laws, repealed by this Act, 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 Act 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 Act, or in good faith omitted to be done in accordance therewith, during the period between the acquisition by the Government of Southern Rhodesia of the shares of the Company on the 1st 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.

#### 45. Savings

Section eight of the Regulation of Railways Act shall not apply to the Railways but, nevertheless, the Railways shall, according to the powers conferred upon them by this Act 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.

*[Cap. 453]*

### Schedule (Section 38)

**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**

#### Part I – Preliminary

##### 1. Interpretation

In this Schedule, unless the context otherwise requires—

"**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;

"**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 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 them or on their 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 Southern Rhodesia may from time to time designate as a Minister for the purposes of this Schedule; and
- (b) the Minister;

"**Railways Court**" means the Railways Court constituted by the Order in Council;

"**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 paragraph 3 (1);

"**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 of 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

*[Please note: incomplete section as in original.]*

## Part II – Registration of trade unions

### 2. Amalgamated Engineering Union and Rhodesia Railway Workers' Union to be registered in respect of their existing interests in the railway industry

- (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 Zambia 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 paragraph, be a body corporate within Zambia 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.

### 3. Registration of statutory union

- (1) Notwithstanding the provisions of paragraph 2 and subject to the provisions of sub-paragraph (2) of this paragraph, 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 employees who are not members of either of the registered unions.
- (2) The Ministers shall not register a trade union under sub-paragraph (1) unless they are satisfied that—
  - (a) the union will be sufficiently representative of 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 paragraph, 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. Variation of interests**

- (1) A registered trade union may apply to the Ministers for its registration in respect of additional interests in the railway undertakings.
- (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-paragraph (1), 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.

#### **5. Statutory union to be body corporate**

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.

#### **6. Transfer of rights and liabilities of members to statutory union and limitation of liability of members**

- (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.

#### **7. Matters for which constitution of statutory union must or may provide**

- (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-paragraphs (1) and (2) of this paragraph and of paragraph 3 (2), the constitution of the statutory union may be altered from time to time with the approval of the Ministers.

## 8. Delegation of certain powers prohibited

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 any office-bearer or official thereof shall not delegate that power to any other person or body.

## 9. Information to be furnished to Ministers

- (1) The statutory union shall furnish to the Ministers such information as may be prescribed by regulation.
- (2) The chief industrial officer shall, on request by the Ministers, furnish to them any information obtained by him from the Amalgamated Engineering Union or the Rhodesia Railway Workers' Union under section 16 of the Industrial Conciliation Act, 1945, of Southern Rhodesia.

## 10. Cancellation of registration of statutory union

- (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-paragraph (2) 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-paragraph (2), 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 paragraph 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. Freedom of association of employees

- (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.
- (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 III – Industrial councils

### 12. Industrial councils to be bodies corporate and liabilities of parties to be limited

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

An industrial council shall endeavour by negotiation of agreements or otherwise to prevent disputes in which Zambia 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:

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. Matters that may be dealt with by industrial council

- (1) An agreement which may be declared binding under paragraph 29 may include provisions as to all or any of the following matters:

- (i) 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;
- (ii) 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;

- (iii) 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;
- (iv) 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;
- (v) the method of calculating minimum rates of remuneration or minimum average rates of remuneration;
- (vi) 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;
- (vii) 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;
- (viii) the maintenance by the Railways of records of work performed by piece-workers and the form of such records;
- (ix) the prohibition or the regulation of the giving out to, or the performance by, an employee of piece-work or task-work;
- (x) 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;
- (xi) 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;
- (xii) 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;
- (xiii) the notices to be exhibited by the Railways;
- (xiv) the prohibition of the employment of any person under a specified age;
- (xv) special conditions of employment for female and for juvenile employees;
- (xvi) the terms and conditions of apprenticeship and learnership;



- (xvii) 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;
- (xviii) the granting of exemption to any person from any of the provisions of an agreement and the conditions which shall apply thereto;
- (xix) 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;
- (xx) the prohibition of the payment of remuneration otherwise than in money;
- (xxi) the maximum number of hours to be worked in any particular occupation in any day or week;
- (xxii) the prohibition or limitation or regulation of overtime work;
- (xxiii) the grading by the council of employees according to bases or principles prescribed in

*[Please note: incomplete sub-paragraph as in original.]*

## **15. Delegation of functions by industrial council to executive or other committee**

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 connection with the administration of any agreement which is made binding under paragraph 29:

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.

## **16. Chairman of industrial council**

- (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 paragraph 23 (2), 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. Meetings of industrial council**

- (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.
- (2) Subject to the provisions of sub-paragraph (3), 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 may take evidence and report thereon and for this purpose may exercise the powers conferred on an industrial council by paragraph 19.

- (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-paragraph (4), 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-paragraph (4), act in his stead, the provisions of sub-paragraph (5) 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-paragraphs (2), (3), (4) and (7) shall not apply if the constitution of the council otherwise provides in respect of the matters referred to in those sub-paragraphs.
- (9) Subject to the provisions of paragraph 19 (6), every meeting of a council shall be conducted in private, unless the council otherwise decides.

## 18. Minutes of proceedings

- (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-paragraph (2) shall be evidence of the proceedings recorded therein.

## 19. Summoning and examination of witnesses by industrial council or committee

- (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 paragraph 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 paragraph 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 paragraph 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 paragraph, 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 connection with the interrogation of any such person or the production of any such book, document or thing under this paragraph, 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 paragraph 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 paragraph 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 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 paragraph 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.

## **20. Terms of agreement or settlement arranged by industrial council to be transmitted to Ministers**

Whenever an industrial council has negotiated an agreement such as is referred to in paragraph 14 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.

## **21. Annual accounts of industrial council**

- (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 Zambia relating to industrial disputes.

## **Part IV – 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.
- (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 connection 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.
- (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-paragraph (2) it is necessary to appoint an umpire, that person shall be appointed umpire 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.
- (6) Whenever an arbitrator or umpire has been appointed in terms of this paragraph 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 connection 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 paragraph 19.

## 25. Compulsory arbitration

- (1) This paragraph shall apply to any of the following disputes, whenever such a dispute arbitration 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 paragraph 23 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 paragraph, 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-paragraph (1), 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-paragraph (1), 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-paragraph (3) 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-paragraph (1), 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-paragraphs (3), (4), (5), (6), (8), (9) and (10) of paragraph 24 shall, *mutatis mutandis*, apply to arbitration and the making of appointments under this section.

## 26. Cost of arbitration

The costs of any arbitration proceedings under paragraph 24 or 25, including the payments of arbitration (if any) made to witnesses, shall be paid from the contributions referred to in paragraph 14 (1) (xvii).

## 27. Application of Cap. 40 to arbitrations

In any arbitration under this Schedule, the provisions of the Arbitration Act shall apply in respect of any matter not otherwise provided for in this Schedule; if there is no written agreement between the parties to the dispute to submit their differences to arbitration, then the provisions of this Schedule requiring such parties to submit to arbitration shall, for the purposes of the said Arbitration Act, be deemed to be a submission.

# Part V – Miscellaneous

## 28. Effect of arbitration awards

- (1) Any award made by an arbitrator, arbitrators or umpire appointed under paragraph 24 or 25 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 a 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. Application of agreements

- (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 paragraph.
- (2) On receipt of a request made in terms of sub-paragraph (1), the Ministers may, if they deem it expedient, by *Gazette* notice, 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. Ministers' duties in considering agreements**

In considering whether it is expedient to declare an agreement binding in terms of paragraph 29, the Ministers shall pay due regard to the interests of the public of the territories as a whole.

### **31. Amendment of agreements at instance of Ministers**

- (1) If the Ministers refuse to make an agreement binding when requested to do so in terms of paragraph 29, 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.
- (2) If during the period of operation of any agreement which has been made binding in terms of paragraph 29, the Ministers are satisfied that owing to changed conditions or from any other cause the operation of such an 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-paragraph (1) or (2), 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.
- (4) Where the Ministers and the industrial council are unable to agree in terms of sub-paragraph (3), the Ministers shall refer the matter to the Railways Court.

*[As amended by G.N. No. 427 of 1963]*

### **32. Amendment, amplification, replacement or extension of period of agreement at instance of parties**

- (1) Whenever any agreement made binding under paragraph 29 is amended or amplified or replaced by a further agreement, the provisions of that paragraph shall apply in respect of any such further agreement.
- (2) Whenever the Ministers have, under paragraphs 29, 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 a further *Gazette* notice, to a date which they shall therein specify.

### **33. Appeal against refusal of or expulsion from membership of the statutory union**

- (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-paragraph (1), 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 to reinstate the appellant as a member. If the statutory union fails to obey an order given by the Ministers in terms of this sub-paragraph, it shall be guilty of an offence.

### **34. Prohibition of lock-out or strike in certain circumstances**

- (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 sub-paragraph (2) and which are applicable to the occasion have been fulfilled.

- (2) The conditions to be fulfilled for the purposes of sub-paragraph (1) 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 sub-paragraph (a) 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 sub-paragraph (b) apply and, in addition, the matter giving occasion for the strike or lock-out is a dispute referred to in sub-paragraph (a) or (b) of paragraph 25 (1), 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 paragraph 25 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 paragraph or inciting any other person to do so shall be guilty of an offence.

### 35. Evidence

Proof of the publication in the *Gazette* of any notice under paragraph 29, 31 or 32 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 or the making of an award or the publication of such a notice, as the case may be, have been complied with.

### 36. Special defects and irregularities not to invalidate certain matters

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. Railways Court

- (1) The president of the Railways Court shall be a retired Judge or a person who has practised as a legal practitioner in the former Protectorate of Northern Rhodesia, Zambia or both, or as an advocate or attorney in Southern Rhodesia for a period of not less than ten years. He shall be appointed for such period not exceeding three years and on such conditions as to remuneration and otherwise as the Ministers may determine.
- (2) The Minister shall, in consultation with the Government of the Republic of Botswana, maintain a list of persons who may serve as other members of the Court.
- (3) The persons whose names are on such list shall be persons whom the Minister considers to be suitable to be members of the Court and to have no direct interest in matters likely to come before the Court.
- (4) In appointing the four other members of the Court the president shall appoint two members from such list and such appointments shall be made in respect of each matter referred to the Court with due regard to the nature of such matter.
- (5) Any person so appointed shall, while engaged in any sitting or any work of the Court, receive such remuneration and such reasonable expenses for travelling and subsistence as may be prescribed by the Ministers.
- (6) One-half of the expenses incurred by the Court in the exercise of its functions shall be met by the Government out of the general revenues of the Republic which are hereby appropriated to the purpose.
- (7) There shall be a registrar of the Court appointed by the president.
- (8) A record of the proceedings of the Court shall be kept and filed in the office of the registrar of the Court, and the same may be inspected and copies thereof obtained upon like conditions and upon payment of the same fees as if they were civil records of a subordinate court.
- (9) All questions or matters requiring to be decided by the Court shall be decided by a majority:  
Provided that any matter of law arising for decision at any sitting of the Court, and any questions arising at any such sitting as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the president, and no other member of the Court shall have a voice in the decision of any such matter.
- (10) The president of the Court may, if the Court is not sitting—
  - (a) postpone or further postpone the hearing of any opposed or unopposed matter;
  - (b) in any unopposed application, grant such application or order that it be referred to the Court for hearing and decision;
  - (c) in opposed or unopposed matters, authorise the proof of all the facts or any particular fact by affidavit;
  - (d) on such terms as to costs and otherwise as he may order, permit any person who has made an application or any person who has lodged an appeal to the Court to withdraw such application or appeal, as the case may be;
  - (e) in respect of any matter dealt with by him in terms of this sub-paragraph, make such order as to costs as he may think fit.
- (11) The president of the Court shall make rules to regulate its procedure which shall be as simple and informal as possible and, in any case not covered by the rules of procedure, the Court shall act in such manner and on such principles as it deems best fitted to do substantial justice and to effect and carry out the objects and provisions of this Act.



- (12) At any hearing before the Court any person may appear either in person or by any person appointed by him in writing.
- (13) Subject to the provisions of this Schedule, the powers, rights and privileges of the Railways Court shall be the same as those conferred upon a commissioner by the Inquiries Act, and the provisions of that Act shall, *mutatis mutandis*, apply in relation to the Railways Court and to a person summoned to give evidence or giving evidence before the Court.
- (14) The Court may make such order as to costs as it may deem just.

*[G.N. No. 427 of 1963 as amended by G.N. No. 318 of 1964 and S.I. No. 154 of 1965]*

*[Cap. 41]*

### **38. Appeals from decisions of the Ministers**

- (1) Any person who considers himself aggrieved by a decision of the Ministers under the powers conferred upon them by any of the undermentioned provisions of this Schedule may, within thirty days after the decision became known to him, appeal against that decision to the Railways Court. The following are the provisions of this Schedule to which this sub-paragraph refers: paragraphs 3, 4, 7(3) and 33(3).
- (2) On such appeal the Railways 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 Railways Court shall, for the purposes of this Schedule, be deemed to be the decision of the Ministers.

*[As amended by G.N. No. 427 of 1963]*

### **39. Reference to Railways Court**

Whenever the Ministers in the exercise of their functions under this Schedule are unable to reach agreement, the subject-matter of the disagreement shall be referred to the Railways Court for decision.

*[G.N. No. 427 of 1963]*

### **40. Penalties**

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.

### **41. Regulations**

- (1) The Governor of the former Protectorate of Northern Rhodesia, after consultation with the Governor of Southern Rhodesia and the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland, may make such regulations as he may deem expedient to give force and effect to this Schedule and for its better administration.
- (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 14 (1)(xvii);
  - (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, or an arbitrator or arbitrators and umpire;
  - (d) all matters which by this Schedule are required or permitted to be prescribed by regulation.

**The Southern Rhodesian Specific Loan Act, 1947, is  
printed as a Supplement to this Act for reference purposes**

**The Specific Loan Act, 1947**

**1. Short title**

This Act may be cited as the Specific Loan Act, 1947.

**2. Provision for raising loan not exceeding £32,000,000**

The Governor may by the issue of stock under the provisions of the General Loans Act (Chapter 150) raise sums of money not exceeding in the whole the amount of thirty-two million pounds for the purposes specified in the Schedule to this Act, and the said sums shall be expended for and are hereby appropriated to the said purposes.

**3. Cap. 150 of the old edition to apply to the loan raised under this Act**

The provisions of the General Loans Act (Chapter 150) shall apply to the loan raised under the authority of this Act.

**Schedule (Section 2)**

1. The payment to the Rhodesia Railways Trust Limited of the sum of three million one hundred and fifty thousand pounds for the purchase of all the shares of Rhodesia Railways Limited.
2. The payment of nineteen million six hundred and eight thousand two hundred and ninety-three pounds for the redemption of the 4½ *per centum* Debenture Stock of Rhodesia Railways Limited at the 30th September, 1947.
3. The payment of two million pounds to the credit of the loan account as defined in the General Loans Act [Chapter 150 of the old edition].
4. All costs, charges, commissions and expenses of and incidental to the raising of the said monies and the payment of the moneys referred to in clauses one, two and three of this Schedule.
5. After the above payments, the balance shall be utilised for capital expenditure in connection with the system of Rhodesia Railways Limited.