

GOVERNMENT OF ZAMBIA

ACT

No. 17 of 1982

Date of Assent: 20th August, 1982

An Act to provide for the vesting of the undertaking and assets of the Zambia Railways Board in Zambia Railways Limited; the winding up and dissolution of the Zambia Railways Board; the provision of rail services within, into and out of Zambia; the repeal of the Zambia Railways Act; and matters connected with or incidental to the foregoing.

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ENACTED by the Parliament of Zambia.

Enactment

PART I
PRELIMINARY

1. (1) This Act may be cited as the Railways Act, 1982. Short title and commencement
 (2) This Act shall come into operation on such date as the Minister may, by statutory order, appoint.
2. The provisions of this Act shall not apply to the Tanzania-Zambia Railway Authority established by section *four* of the Tanzania-Zambia Railway Act. Application
Cap. 768
3. (1) In this Act, unless the context otherwise requires— Interpretation
 “agent” when used in relation to a railway company means a person employed or authorised by a railway company to act on its behalf;
 “animals” means animate objects of any kind except human beings;
 “authorised employee” means an employee authorised by a railway company to exercise the powers or perform the duties in relation to which the expression is used;

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- “booking office” means a place at which tickets may be obtained or charges paid to a railway company;
- “charges” means all sums received or receivable, charged or chargeable, for, or in respect of, the carriage or warehousing of goods or for, or in respect of, any other services or facilities provided by a railway company;
- “consignee” means the person, firm or body to whom goods accepted for carriage by a railway company are addressed;
- “consignment” means one or more packages of goods or a quantity of loose goods tendered by a consignor and accepted by a railway company for carriage to a consignee on one consignment note;
- “consignor” means the person, firm or body tendering goods which are accepted for carriage by a railway company;
- “customs law” means any law relating to the collection of customs or excise duties;
- “fare” includes all sums received or receivable, charged or chargeable, for the carriage of a passenger by a railway company;
- “firebreak” means a strip of land, whether under trees or not, which has been cleared of inflammable matter to prevent the spread of fire, and which, unless otherwise agreed upon in writing by the parties concerned, is not less than ten metres in width (measured from the boundary of the land upon which a railway is constructed);
- “free pass” means any written authority for the carriage of any person as a passenger issued by a railway company without payment of any fare;
- “goods” includes luggage, animals (whether alive or dead) and all other movable property of any description;
- “light engine” means a locomotive without a vehicle attached to it;
- “luggage” means such articles of personal apparel or for personal use, together with their containers, if any, as are usually carried by passengers for their personal use, but does not include goods which, though carried in any such container or otherwise, are not intended for any such use;

“passenger” means any person lawfully travelling on any train or vehicle provided by, or under the control of, a railway company;

“perishable goods” means goods liable to rapid deterioration and, in particular, means fish, fruit, vegetables, potatoes, plants, bread, meat, butter, eggs, milk, cheese, birds, poultry, game, small animals, and any other thing which a railway company may, by notice in the *Gazette*, declare to be perishable goods;

“purposes of a railway company” means any purposes necessary or desirable for the performance of the services, or the provision of any facilities, which a railway company is authorised to perform or provide under this Act or under a railway permit;

“railway” includes any portion of the lines of railway and all other movable or immovable things attached thereto or used in connection therewith;

“railway company” means the holder of a railway permit;

“railway permit” means a permit issued in terms of section *twelve*;

“railway station” includes a road service station operated by a railway company;

“rates” includes all sums which may, under the provisions of this Act, be levied for, or in respect of, the carriage or warehousing of goods or for, or in respect of, any other service performed or facility provided by a railway company;

“road” includes any street, thoroughfare, path or lane;

“rolling stock” includes locomotive engines, tenders, coaches, wagons, trucks and trolleys of all kinds;

“season ticket” means a ticket entitling the person to whom it is issued to be carried by a railway company as a passenger between the places and on the number of occasions or during the period specified thereon;

“Tariff Book” means the Tariff Book required to be published by a railway company under section *fifty-seven*;

“ticket” includes a single ticket, a return ticket, a season ticket, and any other written authority (except a free pass) for the carriage of a person as a passenger by a railway company;

“train” means a locomotive with a vehicle attached, a light engine or a motor trolley;

- “vehicle” means any coach, truck, van or other conveyance used for transport by railway;
- “warehouse” includes any building, place or vehicle when used by a railway company for the purpose of warehousing or depositing goods;
- “watercourse” means any river, stream, drain, gully, canal or other channel, whether artificial or not, in which water flows, whether constantly or intermittently;
- “waterworks” includes boreholes, wells, reservoirs, dams, weirs, tanks, cisterns, conduits, aqueducts, pipes, hydrants, taps, pumps, engines and all other structures, plant and appliances used or constructed for obtaining, storing, purifying, conveying, distributing, measuring or regulating water.

(2) For the purpose of this Act, goods shall be deemed to be in transit from the time the goods are accepted by a railway company for carriage until the expiry of twenty-four hours after the goods have arrived at the place to which, in respect of their carriage by the railway company, the goods have been consigned; and thereafter the goods shall, so long as they remain in the custody of the railway company, be deemed to be in such custody otherwise than for the purpose of carriage:

Provided that—

- (i) where the goods are delivered to the consignee within such period of twenty-four hours, the goods shall cease to be in transit as from the time when they are so delivered;
- (ii) where the goods are perishable goods and such railway company, in exercise of its powers under this Act, disposes of the goods within such period of twenty-four hours, the goods shall cease to be in transit as from the time when they are so disposed of;
- (iii) where the goods are, in respect of their carriage by the railway company, consigned to a place at which the railway company does not maintain any staff for the receipt thereof, the goods shall cease to be in transit as from the time when they arrive at such place;
- (iv) where the goods are consigned for delivery to a place other than a railway station by means of a delivery service operated by the railway company and the goods cannot, due to causes beyond the control of the railway company, be delivered at such place within twenty-four hours after the time of their arrival at the railway station from which the delivery

service is operated, the goods shall cease to be in transit after the time when the goods are tendered for delivery at such place or after the expiry of twenty-four hours after the time of their arrival at the railway station from which the delivery service is operated, whichever is the earlier.

(3) In this Act, and in any document issued under this Act, unless the context otherwise requires—

(a) “accepted by a railway company” means accepted by an employee or agent of the railway company for carriage or warehousing by the railway company in accordance with the provisions of this Act:

Provided that acceptance shall not be deemed to have been effected until a receipt signed by an authorised employee or agent, has been issued in respect of the goods accepted;

(b) “carried by a railway company” means carried by a railway company in accordance with the provisions of this Act;

(c) “operated by a railway company” means operated by a railway company in accordance with the provisions of this Act;

(d) “possession of a railway company” means the possession by any employee of a railway company in the course of his duty;

(e) “premises occupied by a railway company” means premises vested in or placed at the disposal of a railway company for the purposes of the railway company;

(f) “property of a railway company” means property vested in or placed at the disposal of a railway company for the purposes of the railway company;

(g) “services or facilities provided by a railway company” means services performed or facilities provided by a railway company in accordance with the provisions of this Act or a railway permit;

(h) “vehicle of a railway company” includes a vehicle operated on behalf of a railway company.

PART II

DISSOLUTION OF BOARD

4. (1) From the commencement of this Act the Board shall exist only for the purpose of winding up its affairs, and for no other purpose.

(2) Notwithstanding anything to the contrary contained in the Zambia Railways Act, or in any other written law,

Winding up
and
dissolution
of Board

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the Board shall have, for the purpose of winding up its affairs, power to do anything which is necessary or expedient for that purpose or which is incidental thereto, including, in particular, but without prejudice to the generality of that power, power to enter into and carry out agreements and arrangements for the transfer of its property, rights, liabilities and obligations to any person or the Government.

(3) When the Minister is satisfied that all necessary agreements and arrangements have been made for the winding-up of the affairs of the Board so that it may be dissolved, he shall, by statutory instrument, order that the Board shall be dissolved on such date as may be appointed in the statutory instrument.

Vesting of
assets and
liabilities
of Board
in Company

5. (1) On the date appointed under subsection (3) of section *four* there shall be transferred to and vest in the Company by virtue of this Act and without further assurance—

- (a) the undertaking of the Board; and
- (b) subject to the provisions of this Act, all property, rights, liabilities and obligations which immediately before the date appointed under subsection (3) of section *four* were the property, rights, liabilities and obligations of the Board.

(2) Subject to the agreement of the Company and as hereinafter provided, every deed, bond or agreement (other than an agreement for personal service) to which the Board was a party immediately before the commencement of this Act, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned, shall, unless its subject-matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect as from the date of the assignment thereof, as if—

- (a) the Company had been a party thereto;
- (b) for any reference to the Board there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to the Company;
- (c) for any reference to any other officer of the Board not being a party thereto and beneficially interested therein there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer of the Company as the Company shall designate.

(3) Subject to the provisions of subsection (2), documents other than those referred to in that subsection, which refer specifically or generally to the Board shall be construed in accordance with the said subsection as far as applicable.

6. Whenever in pursuance of this Act, any property, rights, liabilities or obligations of the Board are deemed transferred, in respect of the transfer of which any written law provides for registration, the Board shall make an application in writing to the appropriate registration authority for the registration of such transfer, and such authority shall make such entries in the appropriate register as shall give effect to such transfer and, where appropriate issue to the transferee concerned a certificate of title in respect of the said property or make necessary amendments to the register, as the case may be, and, if presented therefor, make endorsement on the deeds relating to the title, right or obligation concerned; and no registration fees, stamp duty or other duties shall be payable in respect thereof.

Registration
of
property
to be
transferred
by Board

7. (1) Where any person who was in the service of the Board immediately before the commencement of this Act, voluntarily transfers from that service to the service of the Company, his terms and conditions of service with the Company shall be no less favourable than those he enjoyed while in the service of the Board, and his previous service with the Board shall be treated as service under the Company for the purposes of determining his rights to, or eligibility for, pension, gratuity, leave or other benefits.

Terms of
service of
employees
of Board
upon
transfer

(2) A person to whom subsection (1) applies shall be deemed to have voluntarily transferred from the service of the Board to the service of the Company unless within three months from the commencement of this Act he gives notice in writing to the Board, with a copy thereof to the Company, stating his intention not to transfer from the service of the Board to the service of the Company.

8. (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Company by virtue of this Act, the Company and all other persons affected thereby shall, as from the commencement of this Act, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Company.

Legal
proceedings

(2) Any legal proceedings or application to any authority pending immediately before the commencement of this Act by or against the Board may be continued by or against the Company.

(3) After the commencement of this Act proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Board may be instituted by or against the Company.

Interpreta-
tion

9. In this Part, unless the context otherwise requires—

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“Board” means the Zambia Railways Board established by section *three* of the Zambia Railways Act;

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“Company” means Zambia Railways Limited, a company registered in that name under the Companies Act.

PART III

RAILWAY PERMITS

Rail services to be provided in accordance with railway permit

10. No person shall provide any rail service within, into or out of Zambia otherwise than in accordance with the terms and conditions of a railway permit issued by the Minister.

Application for railway permit

11. An application for a railway permit to provide any rail service or to construct any railway shall be lodged in such manner as the Minister may, by statutory instrument, prescribe; and shall be accompanied by such details as the Minister may direct.

Issuance of railway permits

12. (1) The Minister may, in his discretion—

- (a) issue railway permits on such terms and conditions as to him appear appropriate in any particular case;
- (b) vary from time to time the terms and conditions of any railway permit;
- (c) suspend any railway permit for a particular period or indefinitely;
- (d) cancel any railway permit.

(2) The Minister may from time to time review any decision made under subsection (1).

PART IV

ENTERING UPON OR ACQUIRING LAND

Power to enter upon land for railway purposes

13. (1) Subject to the provisions of this section a railway company, through its agents or employees duly authorised in writing by it in that behalf, shall have power for the purposes of such railway company to enter upon—

- (a) any land and survey such land or any portion thereof;
- (b) any land contiguous to any premises occupied by such railway company and—
 - (i) excavate, take away and use any earth, stone, gravel or similar materials out of such land;
 - (ii) cut, take away and use any timber from any such land;

- (iii) lay, construct, erect and maintain thereon any poles, posts, standards, cables, wires, cords, pipes, tubes or other things required for or in connection with the operation and maintenance by such railway company of telegraphic or telephonic means of communication:

Provided that every such cable or cord which crosses any road above the surface of the ground shall be placed not less than 5.50 metres above the ground and in such manner as not to hinder or obstruct the free use and enjoyment of such road by users thereof.

(2) Before exercising or authorising the exercise of any of the powers conferred by this section in respect of any land, the railway company shall give reasonable notice of its intention so to do to all persons interested in such land.

(3) Where a railway company lawfully exercises any of the powers conferred by this section, such railway company shall be liable to the owner of such land or to any person interested therein to pay compensation only for the materials and timber taken therefrom, or the actual loss or damage caused to any improvements thereon.

14. (1) Any authorised employee or agent of a railway company may, for the purpose of preventing the occurrence of any accident, preserving the safe operation of any transport service provided by such railway company or repairing any damage caused by any accident, enter upon any land and—

Power to enter upon land to prevent accidents, etc.

- (a) cut down or remove any tree or other obstruction, not being a building, which obscures the view of any fixed signal or which is likely to cause any obstruction or danger to any such transport service; and
- (b) execute such other works as may be necessary to prevent the occurrence of any accident or to repair any damage caused as a result of any accident.

(2) Where any tree or other obstruction is cut down or removed under paragraph (a) of subsection (1), the owner or occupier of the land shall be entitled to adequate compensation therefor from such railway company:

Provided that no such compensation shall be payable if the tree or other obstruction cut down or removed came into existence subsequent to the provision of the transport service.

(3) Where any person erects any building which obscures the view of a fixed signal or is likely to cause any obstruction or any danger to any rail or transport service provided by a

railway company, such railway company may, unless such person has previously obtained its approval to the erection of such building or has modified it to its satisfaction, apply to the High Court for an order for the demolition or modification of such building or, as the case may require, for the payment to such railway company of the cost incurred in resiting or replacing any signalling equipment or otherwise necessary to prevent such obstruction or danger and the court, in its discretion, may make such order, including matters relating to the payment of compensation and costs, as it deems fit.

Power to enter upon land to alter position of pipes, etc.

15. (1) Any authorised employee or agent of a railway company may, for the purposes of such railway company, enter upon any land and alter the position of any pipe for the supply of gas, oil, water or compressed air, or of any electric, telephone or telegraphic wire or of any drain.

(2) Before a railway company exercises any power under subsection (1), it shall give reasonable notice of its intention to do so to the authority or person having control of the pipe, wire or drain and—

(a) such authority or person may authorise a representative to superintend such work and may require such railway company to execute such work to the satisfaction of such representative; and

(b) such railway company shall make arrangements for the maintenance of the supply of gas, oil, water, compressed air or electricity, or for the continuance of the telephonic or telegraphic communications or for the maintenance of the drainage, as the case may be, during the execution of such work.

(3) Where any damage is caused by reason of the exercise of the powers conferred by this section, the person suffering such damage shall be entitled to adequate compensation therefor from such railway company.

Power to take water

16. A railway company may, for the purposes of such railway company, take any water from any natural water-course, subject to the provisions of any written law regulating the use of water.

Compulsory acquisition of land for railway purposes

17. Whenever the Minister is satisfied that—

(a) it is necessary for a railway company to acquire a particular piece of land for the construction of any railway authorised by a railway permit; and

(b) such railway company has taken all reasonable steps to acquire such land by agreement; and

(c) there is no reasonable prospect of such land being acquired by agreement;

he may recommend to the President that such land should be acquired under the provisions of the Land Acquisition Act.

18. (1) Any person entitled to compensation under this Part shall, within such time, and in such form, as may be prescribed, deliver to the railway company liable to pay compensation a notice stating the amount of compensation claimed and providing such other details as may be prescribed.

Procedure
for
claiming
compensation

(2) Within twenty-eight days of receiving the notice referred to in subsection (1), the railway company shall—

- (a) make to the claimant an unconditional offer in writing in such amount as compensation as may appear adequate to such railway company; or
- (b) where it appears to the railway company that the claimant is not entitled to compensation for any reason, inform the claimant in writing of such reason.

(3) Where an offer made in terms of subsection (2) is accepted in writing by the claimant, the amount so offered and accepted shall be deemed adequate compensation for all purposes and shall be recoverable as a civil debt.

19. (1) Notwithstanding the provisions of section *eighteen*, any person to whom this part applies may make application to the High Court for the determination of any relevant matter, and in particular—

High Court
may
determine
certain
matters

- (a) his interest in or right over any land in relation to which any power conferred by this Part has been exercised;
- (b) the legality or validity of any purported exercise of the powers conferred by this Part;
- (c) the amount of compensation payable by virtue of anything done in exercise of the powers conferred by this Part.

(2) Upon hearing the application referred to in subsection (1), and subject to the provisions of this Part, the High Court may make such order as it deems just.

PART V

ROAD AND RAIL CROSSINGS AND ACCOMMODATION WORKS

20. Except with the prior approval in writing of a railway company, no person shall construct or carry any road across any railway:

Restriction
on road
construction
across
railway

Provided that any person aggrieved by the refusal of a railway company to give such approval may appeal to the Minister.

Construction
of railway
across public
road

21. (1) Where, in exercise of the powers contained in a railway permit, a railway company proposes to construct a railway across a public road, the Minister may, subject to the provisions of subsection (3), require such railway company to construct the railway in such manner that it does not cross such road on the level and to execute such other works as may be necessary for the safety of the public; and such railway company shall comply with such requirements.

(2) Where any railway has been constructed so as to cross a public road on the level, the Minister may, subject to the provisions of subsection (3), require the railway company concerned—

- (a) to erect gates or provide other safety measures; or
- (b) to raise or lower the level of the public road so that it crosses the railway above or below and not on the level;

and to execute such other works as may be necessary for the safety of the public; and such railway company shall comply with such requirements.

(3) The Minister shall, before making any requirement under this section, communicate with such railway company and the highway authority responsible for the maintenance of such public road and shall take into consideration any representations made by such railway company or such highway authority.

(4) Where, as a result of a requirement made by the Minister under this section, any works are to be constructed by a railway company, the manner of the construction of such works and the apportionment of the cost of construction and maintenance thereof shall be determined by agreement between such railway company and such highway authority responsible for the maintenance of such public road or, if no such agreement is reached, it shall be determined by the Minister, whose decision shall be final.

Level
crossings,
protective
works,
bridges and
subways

22. Whenever a railway company and any person whose road crosses a railway fail to agree as to—

- (a) whether a level crossing should be provided at such crossing;
- (b) whether any protective works are necessary at such level crossing;

- (c) whether any bridge or subway is necessary at such crossing;
- (d) the terms and conditions under which any level crossing, protective works, bridge or subway should be provided or maintained; or
- (e) who should bear the cost of constructing or maintaining any level crossing, protective works, bridge or subway, or in what proportion such costs should be borne;

either party to the dispute may appeal to the Minister.

23. (1) Subject to the provisions of subsection (2), where, in exercise of its powers under a railway permit, a railway company constructs a railway, such railway company shall, during the construction of the railway or as soon as practicable thereafter, construct and maintain the following accommodation works for the benefit of the owners and occupiers of lands adjoining those on which the railway is constructed:

Accommodation
works

- (a) such crossings, bridges or other works as, in the opinion of such railway company, are necessary for the purpose of making good any interruption caused by the construction of the railway to the use of lands through which the railway is constructed;
- (b) such culverts, drains or other works as, in the opinion of such railway company, are necessary to convey water as freely, or as nearly thereto, as practicable, from or to such adjoining lands as prior to the construction of the railway:

Provided that nothing in this section shall require the construction or maintenance of any accommodation works—

- (i) in such manner as to prevent or obstruct the proper operation of the railway;
- (ii) where the owners or occupiers, or their predecessors in title, of the lands have received an agreed sum of compensation in consideration of such works not being constructed or maintained; or
- (iii) at any time after a period of five years from the date on which the railway passing through the lands was first opened for the public carriage of passengers or goods.

(2) Where suitable accommodation works for the crossing of any road or watercourse have been once constructed and such road or watercourse is afterwards diverted by some person other than the railway company concerned, then such railway company shall not be required to construct other accommodation works for the crossing of such road or watercourse.

Additional
accommo-
dation
works

24. If at any time—

- (a) the owner or occupier of any land on which a railway is constructed desires any accommodation works in addition to those, if any, constructed by the railway company under section *twenty-three*; or
- (b) any highway authority proposes to construct a public road or any other works across a railway;

then such owner, occupier or highway authority, as the case may be, may require the railway company to construct such accommodation works—

- (i) as may be agreed between such railway company and the owner, occupier or highway authority; and
- (ii) if no such agreement is reached, as may be determined by the Minister;

and the cost of constructing such accommodation works shall be borne by the owner, occupier or highway authority requiring them.

Inquiry
by
Minister

25. Where any matter under this Part has been referred to the Minister, he may cause an inquiry to be made before making a determination thereon.

Appeal to
High Court

26. Any person, other than a highway authority, who is aggrieved by any determination of the Minister made under this Part may appeal to the High Court.

Interpreta-
tion

27. In this Part, unless the context otherwise requires—

“highway authority” means the highway authority responsible for the construction, care and maintenance of any road or class of road in accordance with the provisions of the Roads and Road Traffic Act;

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“person” includes a highway authority.

PART VI

INSPECTORS OF RAILWAYS

Appoint-
ment and
duties of
Inspectors
of
Railways

28. (1) The Minister may appoint suitable public officers as Inspectors of Railways for the purposes of this Act.

(2) Notice of the appointment of every Inspector of Railways shall be published in the *Gazette*.

(3) The duties of an Inspector of Railways shall be—

- (a) to inspect any railway or rolling stock with a view to determining whether the same is fit for the public carriage of passengers or goods;

- (b) by notice in writing under his hand addressed to the railway company, to declare unfit for service any part of a railway or any rolling stock and to report thereon to the Minister;
- (c) to inspect any railway or rolling stock used thereon for the purpose of ascertaining whether the provisions of any written law or of any directions relating to the safety and protection of passengers or goods carried by rail are being complied with;
- (d) to inquire into the qualifications or competence of any employee of a railway company who is engaged in any railway operations and in appropriate cases to require the railway company to relieve any such employee from any duties connected with any railway operations;
- (e) to make inquiries, in accordance with the provisions of this Act, into the cause of any accident on any railway;
- (f) to perform such other functions as are conferred or imposed upon him under the provisions of this Act or any other written law; and
- (g) to perform any other functions as the Minister may direct in relation to the safety and protection of passengers or goods carried by rail.

(4) For the purposes of this section—

“ railway operations ” means anything connected with the actual operation and maintenance of railways and rolling stock, but does not include any administrative functions.

29. (1) Every Inspector of Railways shall, for the purpose of performing his functions under this Act, have power—

Powers of
Inspectors
of
Railways

- (a) to enter, inspect and examine any premises of any railway company at all reasonable times by day or night;
- (b) to interrogate and take written statements from any employee or agent of any railway company;
- (c) to make inquiries regarding the state and condition of any building, works, rolling stock or other thing used, or intended to be used for, or in connection with, the public carriage of passengers or goods by rail;
- (d) to require the production of any book or document other than a communication between a railway company and its lawyers, which appears to him to be necessary to inspect;

(e) by notice in writing under his hand addressed to the railway company, to require any employee or agent of the railway company to attend before him and provide answers or returns to such inquiries as he may think fit to make from such employee or agent.

(2) No action or other legal proceedings shall be instituted against an Inspector of Railways in respect of any act done or omitted to be done by him in good faith in the exercise or purported exercise of his functions under this Act.

Duties of railway company in respect of functions of Inspectors of Railways

30. It shall be the duty of every railway company—

- (a) to comply with any directions given by an Inspector of Railways under the provisions of this Act;
- (b) to give an Inspector of Railways such assistance as may be reasonably required for the efficient performance by him of his functions under this Act; and
- (c) to provide such information to him as he may reasonably require for the purpose of, or in connection with, the exercise of his powers and the performance of his duties under this Act.

PART VII

OPENING NEW RAILWAY AND PUTTING INTO SERVICE NEW TYPE OF ROLLING STOCK

Restriction on opening new railway or using new type of rolling stock

31. No railway company shall open a new railway or put into service a new type of rolling stock otherwise than in accordance with the provisions of this Part.

Notice of proposed opening of railway or use of new type of rolling stock

32. (1) Subject to the provisions of subsection (2), every railway company shall, not less than one month before it proposes to open a railway for the public carriage of passengers or goods or put into service a new type of rolling stock, give to the Minister notice in writing of its intention to do so.

(2) The Minister may in any particular case reduce the period of, or dispense with, the notice required under the provisions of subsection (1).

Condition precedent to opening railway or putting into service new type of rolling stock

33. A railway company shall not open a railway for the public carriage of passengers or goods, or put into service on a railway a new type of rolling stock, until the Minister, or an Inspector of Railways authorised in that behalf by the Minister, has approved in writing the opening of such railway, or the putting into service on the railway of such new type of rolling stock.

Procedure for approval

34. (1) The approval in writing required under the provisions of section *thirty-three* shall not be given until an Inspector of Railways has, after inspection in that behalf, reported in writing to the Minister that—

- (a) he has made a careful inspection of the railway and the rolling stock;

- (b) the moving and fixed dimensions approved by the Minister have not been infringed;
- (c) the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of rolling stock are such as have been approved by the Minister;
- (d) the regulations and instructions necessary for the working of the railway when open for the public carriage of passengers and goods or for putting into service the new type of rolling stock have been issued by the railway company; and
- (e) in his opinion, the railway may be opened for the public carriage of passengers and goods or the new type of rolling stock may be put into service, without danger to passengers or goods carried by rail.

(2) If, in the opinion of an Inspector of Railways, the railway cannot be opened or the new type of rolling stock cannot be put into service without danger to passengers or goods carried by rail, he shall state that opinion together with the reasons therefor to the Minister and the Minister may thereupon direct the railway company to postpone the opening of the railway or the putting into service of the new type of rolling stock and the railway company shall give effect to such directions.

(3) Any direction given by the Minister under the provisions of subsection (2) shall state the requirements to be complied with as a condition precedent to the opening of the railway or the putting into service of the new type of rolling stock, and shall direct the postponement of the same until the requirements have been complied with or the Minister is otherwise satisfied that the railway can be opened or the new type of rolling stock can be put into service without danger to passengers or goods carried by rail.

(4) The approval in writing required under the provisions of section *thirty-three* may be either absolute or subject to such conditions as may be deemed necessary for the safety of passengers or goods carried by rail.

(5) Where the approval in writing required under the provisions of section *thirty-three* is given subject to conditions, the railway company shall not open the railway or put into service the new type of rolling stock until the conditions are fulfilled to the satisfaction of the Minister or an Inspector of Railways authorised in that behalf by the Minister.

35. (1) The provisions of sections *thirty-one*, *thirty-two*, *thirty-three* and *thirty-four* shall apply *mutatis mutandis* to the opening of works to which this section applies when such works form part of, or are directly connected with, a railway used for the public carriage of passengers or goods, or which were approved prior to its construction when the plans and designs were approved by the Minister.

Alteration
of railway

(2) This section applies to additional lines of railway, deviation lines, sidings, stations, junctions, level crossings, bridges and any alteration or reconstruction materially affecting the structural character of the railway.

Accidents,
temporary
suspension
of traffic,
temporary
diversion,
etc.

36. (1) When an accident has occurred resulting in temporary suspension of traffic and either the original line and works have been restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, before an Inspector of Railways has conducted an inspection of such restoration or diversion, the original line and works so restored or the temporary diversion so laid, as the case may be, may be opened for the public carriage of passengers or goods when the employee in charge of the works undertaken by reason of the accident has certified in writing to the railway company that the opening of the restored line and works, or of the temporary diversion, will not in his opinion be attended with danger to passengers or goods carried by rail.

(2) A notice by telegraph of the opening of the line and works or the diversion under the provisions of subsection (1) shall be sent, as soon as practicable, to an Inspector of Railways by such railway company.

Power to
close
railway or
to dis-
continue
use of rolling
stock

37. (1) Where, after inspecting a railway used for public carriage of passengers or goods or rolling stock used thereon, an Inspector of Railways is of the opinion that the use of the railway or of any specified rolling stock will be attended with danger to passengers or goods carried by rail, he shall state that opinion, together with his reasons therefor, to the Minister and the Minister may thereupon direct the railway company that the railway be closed for public carriage of passengers or goods or that the use of the rolling stock specified in the direction be discontinued or that the railway or the rolling stock specified in the direction be used for the public carriage of passengers or goods on such conditions as may be specified in the direction by the Minister.

(2) Any direction given by the Minister under the provisions of subsection (1) shall state the grounds on which the direction is based.

Re-opening
of closed
railway, etc.

38. (1) When a railway has been closed under the provisions of section *thirty-seven* it shall not be re-opened for the public carriage of passengers or goods until—

- (a) an Inspector of Railways has made a report to the Minister; and
- (b) the Minister has approved in writing the re-opening thereof.

(2) When the Minister has directed under the provisions of section *thirty-seven* that the use of rolling stock specified in the direction be discontinued, the railway company shall not put into service the specified rolling stock until—

- (a) an Inspector of Railways has made a report to the Minister; and
- (b) the Minister has approved in writing that the rolling stock may be put into service.

39. (1) The Minister may, by statutory instrument, delegate to an Inspector of Railways the exercise of any of his powers or the performance of any of his duties under this Part.

Delegation
of
Minister's
powers

(2) The Minister may vary or cancel any approval or direction given by an Inspector of Railways in exercise of the powers or the performance of the duties delegated to him under subsection (1).

(3) The Minister may exercise a power or perform a duty notwithstanding that he has delegated the exercise or performance thereof to an Inspector of Railways.

PART VIII

ACCIDENTS

40. When an accident occurs in the course of any operations carried on by any railway company which—

Duty to
report
accidents

- (a) is attended, or is of a kind usually attended, with loss of human life, or with serious injury to any person or property;
- (b) involves any collision or averted collision between two or more trains;
- (c) involves the derailment of any train, or of any part thereof carrying passengers;
- (d) involves any collision between a train and any motor vehicle;
- (e) occurs in midsection;
- (f) involves cases of landslides or breaches by rain or floods causing interruption of through-communication for twenty-four hours or more; or
- (g) occurs in such circumstances or is of such a kind as the Minister may specify in directions given to the railway company;

such railway company shall, as soon as possible, give notice thereof to the Minister and to an Inspector of Railways, and in the case of an accident involving loss of life or serious injury to any person, such railway company shall cause the matter to be reported to the nearest police station.

Inquiries
into
accidents

41. (1) The Minister may order an inquiry into any accident referred to in section *forty* to be made by an Inspector of Railways or by any other person and for that purpose he may prescribe the procedure for the making of such inquiry, specify the person by whom it shall be made, the remuneration to be paid to such person and to witnesses and the place where, and the time at which, it shall be held.

(2) Any expenses incurred in connection with an inquiry made under subsection (1) shall be paid out of the moneys appropriated by Parliament for the purpose.

(3) The Inspector of Railways or the person making an inquiry under subsection (1) shall, for the purpose of such inquiry, have such powers relating to the summoning and examination of witnesses and the production of documents as the Minister may, by statutory instrument, prescribe.

(4) The Inspector of Railways or the person by whom an inquiry is made under subsection (1) shall prepare a report on the accident, setting out *inter alia* the cause or probable cause of the accident, the persons, if any, responsible for the accident, the adequacy of relief measures and the steps, if any, which have been taken, or should be taken, with a view to avoiding a recurrence thereof, and shall submit such report to the Minister.

Submission
of returns
of accidents

42. Every railway company shall submit to the Minister a return of all accidents occurring on its railway in such form and such manner and at such intervals as the Minister may direct.

PART IX

RAILWAY OPERATIONS

Powers of
railway
company
to
determine
conditions
for
carriage of
passengers
and
luggage

43. (1) A railway company may, subject to the provisions of this Act—

- (a) determine the conditions upon which passengers and luggage shall be carried by it and different conditions may be determined in different cases; and such conditions shall be published in the Tariff Book and shall have effect from the date of such publication or from such later date as may be specified therein;
- (b) determine the fares and other charges for the carriage of passengers and luggage by it; and such fares and other charges shall be published in the Tariff Book and shall have effect from the date of such publication or from such later date as may be specified therein:

Provided that provision shall be made for the carriage free of charge of a specified amount of baggage by a passenger, and different amounts may be determined for passengers travelling by different classes;

- (c) determine the different classes of accommodation available to passengers in its trains or vehicles.

(2) Notwithstanding the provisions of subsection (1), a railway company may, in relation to the special circumstances of any particular case, determine the conditions, fares and other charges applicable to such case for the carriage of passengers or luggage by it and such conditions, fares and other charges shall have immediate effect in relation to such case:

Provided that such conditions, fares and other charges shall, as soon as practicable after such determination, be published in the Tariff Book.

44. Subject to the provisions of this Act, any person who has tendered to an authorised employee the proper fare for the ticket he desires shall be entitled to obtain such ticket and to be carried as a passenger by the railway company in accordance with the conditions subject to which such ticket is issued:

General right of persons to be carried as passengers

Provided that if, in the opinion of an authorised employee, a person who applies for a ticket, or a person in possession of a ticket or free pass, appears to be—

- (i) suffering from any mental disorder;
- (ii) suffering from any contagious or infectious disease; or
- (iii) under the influence of alcohol or drugs to such an extent as to be likely to cause annoyance or injury to other persons;

such person shall not be entitled to obtain such ticket or to be carried as a passenger save in accordance with any special provisions dealing with the carriage of any such person.

45. (1) Every ticket and free pass for use on a railway shall be issued subject to the provisions of this Act and, in addition to any other conditions prescribed under this Act, to the condition that—

General conditions on which tickets, etc., are to be issued

- (a) there is room available in the train or vehicle of the class for which the ticket or free pass is issued;
- (b) an authorised employee may require the passenger to move from one compartment to another of the same class for the purpose of the better use of the accommodation of such train or vehicle; and
- (c) the passenger shall, on being required to do so, present his ticket or free pass for examination by an authorised employee and shall deliver up such ticket or pass to such employee—
 - (i) in the case of a ticket or free pass issued for a particular journey, at or near the end of such journey;
 - (ii) in the case of a season ticket or free pass, upon the expiry of the period for which it was issued.

(2) If no such room as is referred to in paragraph (a) of subsection (1) is available, the holder of a ticket may—

- (a) obtain a refund of the fare which he has paid on returning his ticket to an authorised employee as soon as practicable; or
- (b) elect, subject to their being room available, to travel in a lower class and shall, upon drawing as soon as practicable the attention of an authorised employee to such fact, be entitled to obtain from such employee a certificate that he is entitled to a refund and shall, on presenting that certificate to the railway company, be entitled to a refund of the difference between the fare which he paid and the fare payable in respect of the class in which he travelled:

Provided that the provisions of this subsection relating to a refund shall not apply to the holder of a season ticket.

Fares, etc., payable by person travelling without valid ticket, etc.

46. (1) Any person who—

- (a) travels on any train or vehicle without a valid ticket or free pass; or
- (b) being in, or having come from, any such train or vehicle does not present his ticket or free pass for examination or does not deliver up his ticket or free pass in accordance with the conditions on which the ticket or free pass is issued;

shall be liable to pay on demand by an authorised employee the fare for the distance he has travelled or proposes to travel and, in addition, such excess charges as may be specified in the Tariff Book; and for the purpose of ascertaining such fare it shall be presumed that such person has travelled from the station—

- (i) from which the train or vehicle originally started; or
- (ii) if the tickets or free passes of passengers have been examined during the journey and found to be in order, from the place where they were last examined and found to be in order;

unless he satisfies such authorised employee to the contrary.

(2) Any person who—

- (a) travels in a class of a train or vehicle higher than that for which he is in possession of a valid ticket or free pass; or
- (b) travels on a train or vehicle beyond the place authorised by his ticket or free pass;

shall be liable to pay on demand by an authorised employee a fare equal to the difference between the fare he has paid and that which he should have paid and, in addition, such excess charges as may be specified in the Tariff Book.

(3) If, on demand by an authorised employee, any person refuses to pay the fare and excess charge for which he is liable under this section, any authorised employee or any police officer may arrest such person without warrant, and as soon as practicable thereafter shall bring him before a magistrate having jurisdiction to try him or to commit him for trial.

47. (1) Subject to the provisions of this Act, every passenger shall, on payment of the appropriate charge, if any, be entitled to deliver his luggage to an authorised employee for carriage by the railway company in the appropriate part of a train or vehicle and to obtain a receipt for each piece of such luggage so delivered.

Conditions
of carriage
of luggage

(2) Luggage shall be carried by a railway company subject to the provisions of this Act and, in addition to any other conditions prescribed under this Act, to the condition that—

- (a) unless the luggage is delivered to an employee of the railway company for carriage in accordance with the provisions of subsection (1), it shall be carried at the risk of the passenger; and
- (b) the provisions of this Act in respect of the carriage of goods shall apply to the carriage of luggage, save in so far as it is otherwise specifically provided.

48. (1) A railway company may, subject to the provisions of this Act, determine—

- (a) the conditions upon which goods shall be carried or warehoused by it and different conditions may be determined in different cases; and such conditions shall be published in the Tariff Book and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein;
- (b) the rates and other charges for the carriage or warehousing of goods and for any other service or facility provided by it; and such rates and other charges shall be published in the Tariff Book and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein.

Railway
company
may
determine
conditions
for carriage
of goods,
etc.

(2) Notwithstanding the provisions of subsection (1), a railway company may, in relation to the special circumstances of any particular case, determine the conditions, rates and other charges applicable to such case for the carriage or warehousing of goods by it or for any other service or facility; and such conditions, rates and other charges shall have immediate effect in relation to such case:

Provided that such conditions, rates and other charges shall, if they are of a continuing nature, be available to the public on request.

General
right to
have goods
carried

49. Subject to the provisions of this Act, any person who has tendered to an authorised employee the appropriate rates and other charges, and has complied with the conditions upon which goods may be accepted for carriage by the railway company, shall be entitled to obtain a receipt for such goods and have such goods carried in accordance with the conditions of carriage:

Provided that if, in the opinion of an authorised employee—

- (i) any animal tendered for carriage appears to be suffering from any infectious or contagious disease;
- (ii) any goods tendered for carriage are goods to which section *fifty-four* applies;
- (iii) any goods tendered for carriage exceed the maximum weight or dimensions specified in the Tariff Book;
- (iv) any goods tendered for carriage are improperly or insufficiently packed;
- (v) any animal tendered for carriage is wild or dangerous;
- (vi) the carriage of any goods would at any stage of the transit thereof be contrary to any law; or
- (vii) facilities for dealing with the goods tendered for carriage are not available at the place where such goods are tendered or at the place of destination or at any place *en route*;

the person tendering such goods for carriage shall not be entitled to have such goods carried, save when such goods are accepted for carriage in accordance with any special provisions dealing with the carriage of such goods.

Description,
etc., of
goods to be
delivered

50. (1) The consignor of, or the person tendering any goods to a railway company for carriage or warehousing and, on request by an authorised employee, the consignee of, or the person receiving, any goods which have been carried or warehoused by the railway company, shall deliver to an authorised employee an account in writing signed by such consignor, person or consignee, as the case may be, containing such description of the goods as may be sufficient to enable such employee to determine the rates and charges payable in respect of the carriage or warehousing thereof.

(2) Any authorised employee may, for the purpose of checking any account delivered under subsection (1) require such consignor, person or consignee, as the case may be, to permit him to examine such goods.

(3) If such consignor, person or consignee fails to deliver the account referred to in subsection (1) or to permit such goods to be examined as required under subsection (2), an authorised employee may—

- (a) in respect of goods which are tendered for carriage or warehousing, refuse to accept the goods for such

carriage or warehousing unless in respect thereof a rate or charge not exceeding the highest rate or charge payable for any class of goods is paid; or

- (b) in respect of goods which have been carried, refuse to deliver such goods unless in respect thereof a rate or charge not exceeding such highest rate or charge as is referred to in paragraph (a) is paid.

(4) If, in respect of goods which have been carried or warehoused, an account delivered under subsection (1) is found to be false in any material particular with respect to the description of any goods to which it purports to relate, an authorised employee may refuse to deliver such goods unless, in respect of the carriage or warehousing of the goods, a rate or charge not exceeding double the highest rate or charge payable for any class of goods is paid.

51. (1) Where any person fails to pay on demand made by an authorised employee any fare, rate or charge due from him as a passenger or in respect of any goods, a railway company may detain the whole or any part of such goods, including the luggage of the passenger or, if the value of the goods is, in the opinion of such authorised employee, insufficient to pay for such fare, rate or charge due or if such goods have been removed from the possession of the railway company, any other goods of such person which may be in, or may thereafter come into, the possession of the railway company.

Goods may be sold to pay fares, rates, etc.

(2) Where any goods have been detained under subsection (1), the railway company may, if the fare, rate or charge due is not sooner paid, sell by public auction sufficient of such goods to produce the fare, rate or charge so owing as well as the expenses of such detention and sale; and in the case of—

- (a) perishable goods, such auction may take place as soon as practicable;
- (b) any other goods, such auction may take place on the expiry of at least fifteen days' notice, published in one or more local newspapers, of the intended auction:

Provided that no imported goods shall be sold under this section until they have been entered for home consumption in accordance with the provisions of any customs law in force in the Republic.

(3) The railway company may, out of the proceeds of any sale effected under subsection (2), retain a sum equal to the fare, rate or charge due as well as the expenses of the detention and sale; and shall deliver the balance, if any, of such proceeds together with such of the goods, if any, as remain unsold to the person appearing to the railway company to be entitled thereto:

Provided that if such person fails, after notice to do so, to remove within a reasonable time the goods, if any, remaining unsold, the railway company may sell such goods and dispose of the proceeds of such sale in accordance with the provisions of this section.

(4) Nothing in this section shall prejudice the right of the railway company to recover any such fare, rate or charge, or any part thereof, by any other lawful means.

Unclaimed,
goods in
possession
of railway
company

52. (1) Where any goods in the possession of a railway company are not claimed by the owner or any other person appearing to the railway company to be entitled thereto, the railway company shall, if such owner or person is known, take all reasonable steps to cause a notice to be served upon him requiring him to remove the goods.

(2) If—

- (a) the owner of any goods referred to in subsection (1) is not known or no person appears to be entitled thereto; or
- (b) the notice referred to in subsection (1) cannot for any reason be served; or
- (c) there has been non-compliance with the provisions of any notice served under subsection (1);

the railway company may, within a reasonable time, being not less than three months (except in the case of perishable goods), sell the goods and retain the proceeds of the sale thereof:

Provided that no imported goods shall be sold under this section until they have been entered for home consumption in accordance with the provisions of any customs law in force in the Republic.

Indemnity
where
goods
claimed by
two persons,
etc.

53. Where—

- (a) any goods, or the proceeds of the sale of any goods are in the possession of a railway company and such goods or proceeds are claimed by two or more persons; or
- (b) any person claiming any goods in the possession of a railway company does not produce valid documents showing that he is entitled to take delivery thereof;

the railway company may withhold delivery of such goods or proceeds until the person appearing to the railway company to be entitled thereto has given an indemnity to its satisfaction against the claim of any other person with respect to such goods or proceeds.

Dangerous
or offensive
goods, etc.

54. (1) No person shall take with him upon any train or vehicle of a railway company or tender to it for carriage or warehousing any goods to which this section applies without giving notice of the nature of such goods—

- (a) in the case of goods taken by a person, to the employee in charge of the station at which such person commences his journey; or
- (b) in the case of goods tendered for carriage or warehousing, to the employee to whom such goods are tendered.

(2) An authorised employee may—

- (a) refuse to permit any goods to which this section applies to be taken by any person upon any train or vehicle of the railway company;
- (b) refuse to accept such goods for carriage or warehousing, or accept them only in accordance with any special provisions dealing with the carriage or warehousing of any such goods;
- (c) require any such goods to be marked and packed in such manner as he may direct.

(3) Where an authorised employee has reason to believe that any goods to which this section applies are being carried or warehoused, or have been accepted for carriage or warehousing, in contravention of the provisions of subsection (1) or (2), he may examine such goods and if, on examination, they are found to be goods to which this section applies, he may order their removal from any train, vehicle or premises of the railway company.

(4) Goods to which this section applies are any dangerous or offensive goods or any goods which are likely to cause damage to persons or property.

(5) Nothing in this section shall—

- (a) derogate from the provisions of any written law in force in the Republic relating to the possession or transportation of explosives, petroleum, firearms or ammunition;
- (b) apply to any goods carried by any member of any military force established for the defence of the Republic, or by any police officer, in the course of his duty.

55. Subject to the provisions of this Act, a railway company shall have power to fix and alter from time to time the rates, fares and other charges for the services and facilities provided by it.

Power to fix rates, fares and other charges

56. (1) Whenever a railway company considers that the maintenance of any structure of rates, fares and other charges in respect of the services provided by it under this Act will produce a greater or lesser revenue than is reasonably required to cover operating expenses, financial commitments and the replacement of assets, it may, subject to the approval of the Minister, make such alteration in the said rates, fares or other charges as may be necessary to produce in future years an appropriate increase or decrease, as the case may require, in its revenue, and, in considering any proposals for such alterations, it shall disregard any revenue derived from traffic or services of a temporary or non-continuing nature.

Alteration of rates, fares and other charges

(2) Whenever a railway company proposes to alter any rates, fares or other charges under section *fifty-five* it shall—

- (a) give reasonable notice to the public of the proposed alteration; and

(b) state in such notice that objections by the public to the proposed alterations may be made in writing to the Minister.

(3) Any objection to a proposed alteration of rates, fares or other charges of which notice is given by a railway company under subsection (2), shall be submitted to, and decided upon, by the Minister, whose decision on the matter shall be final.

Preparation
of Tariff
Book, etc.

57. (1) Every railway company shall prepare and publish in such manner as it may think fit—

- (a) a Tariff Book containing all matters which under this Act are required to be contained therein, together with such other matters as under this Act may be determined by the railway company;
- (b) such other books, time-tables and other documents as are required to be kept under this Act.

(2) There shall be available for public inspection at every booking office of a railway company—

- (a) a copy of its Tariff Book containing all amendments for the time being in force;
- (b) a list specifying the fares for the carriage of passengers by it from the place at which the list is kept to every other place to which bookings are commonly made; and
- (c) a time-table of the passenger transport services operated by it.

Determina-
tion of
maximum
load, etc.

58. (1) Every railway company shall determine—

- (a) the maximum load for each of its wagons and no wagon shall, except with the permission of an Inspector of Railways, be loaded in excess of such maximum load;
- (b) the maximum number of passengers that may be carried in any compartment of a coach of a train, or vehicle of the railway company.

(2) Every railway company shall cause the maximum load determined under subsection (1) in respect of every wagon to be marked in a conspicuous manner on such wagon.

PART X

RESPONSIBILITY OF RAILWAY COMPANY AS CARRIER AND WAREHOUSEMAN

Liability
for loss of
life, etc., of
passengers

59. (1) A railway company shall not be liable for the loss of life of, or personal injury to, any passenger except where such loss of life or personal injury is caused by want of reasonable care, diligence or skill on the part of the railway company or of any of its employees or agents:

Provided that nothing in this subsection shall impose upon the railway company any liability from which it is exempt under the provisions of this Act.

(2) A railway company shall not in any circumstances be liable for the loss of life of, or personal injury to, any passenger—

- (a) who is travelling, whether with or without permission, in any part of its train or vehicle other than a part normally provided for the use of passengers during travelling;
- (b) who, not being its employee on duty, is travelling over a railway in the course of construction whether with or without permission;
- (c) who, at the time such loss of life or injury occurred, was being carried by any transport service other than one provided by, or under the control of, the railway company;

and to avoid liability in accordance with the provisions of this subsection it shall not be necessary for notice to be given to such passenger of the conditions on which he travels, and it shall be immaterial whether or not such passenger is an infant.

60. A railway company shall not be liable for any loss arising from delay to any passenger caused by—

- (a) the failure of any train or vehicle to start on or to complete any journey;
- (b) the late starting or late arrival of any train or vehicle;

from whatever cause arising.

61. Subject to the provisions of this Act, except when the owner or consignor or his representative accompanies the property and retains control thereof, a railway company shall be liable for any loss or misdelivery of, or damage to, goods occurring, while such goods are in transit, from any cause whatsoever unless it proves that such loss, misdelivery or damage arose from—

- (a) act of God;
- (b) act of war or an act of an enemy of the Republic;
- (c) seizure under legal process;
- (d) act or order of the Government;
- (e) act or omission of the consignor, his servant or agent;
- (f) inherent liability to wastage in bulk or weight, latent or inherent defect or natural deterioration of the goods; or
- (g) casualty, including fire or explosion:

Provided that—

- (i) where such loss, misdelivery or damage occurs in any of the cases specified in this section owing to failure of the railway company or of any of its employees or agents to use reasonable foresight and care in the carriage of such goods, the railway company shall not be relieved from liability for such loss, misdelivery or damage;

No liability
for delay to
passengers

Liability for
loss, etc., of
goods in
transit

- (ii) the railway company shall not be liable for loss, misdelivery or damage in respect of goods in relation to which an account false in any material particular has been given under subsection (1) of section *fifty* or any incorrect or insufficient address for delivery has been given and such loss, misdelivery or damage is in any way caused by such false account or incorrect or insufficient address;
- (iii) the railway company shall not in any circumstances be liable for loss, misdelivery or damage in respect of goods—
 - A. where there has been fraud on the part of the consignor;
 - B. unless a document acknowledging receipt of such goods for carriage by the railway company has been given;
 - C. which at the time such loss, misdelivery or damage occurred were being carried by any transport service other than one provided by, or under the control of, the railway company;
 - D. where there is a loss of a particular market, whether held daily or at intervals;
 - E. where such loss, misdelivery or damage arises from insufficient packing or incorrect address; or
 - F. where such loss, misdelivery or damage arises from riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general.

Liability for
delay, etc.,
of goods

62. A railway company shall not be liable for any loss arising from the detention, delay or deviation in the carriage of goods unless such detention, delay or deviation is caused by want of reasonable foresight and care on the part of the railway company or of any of its employees or agents:

Provided that the railway company shall not in any circumstances be liable for any loss arising from such detention, delay or deviation—

- (i) where there has been fraud on the part of the consignor;
- (ii) unless a document acknowledging the receipt of such goods for carriage by the railway company has been given;
- (iii) which at the time such detention, delay or deviation occurred were being carried by any transport service other than one provided by, or under the control of, the railway company;
- (iv) where there is a loss of a particular market, whether held daily or at intervals; or
- (v) where such detention, delay or deviation arises from insufficient packing or incorrect address; or

- (vi) where such detention, delay or deviation arises from riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general.

63. (1) The liability of a railway company in respect of any animal shall not in any case exceed the appropriate amount set out in the Tariff Book, unless at the time of the acceptance of such animal by the railway company for carriage the consignor, or his agent, declared that the value of the animal exceeded such appropriate amount and paid, or agreed to pay, such additional charges as may be specified in the Tariff Book in respect of such excess value; and thereupon the liability of the railway company shall not in any case exceed such declared value.

Limitation
of liability
for animals

(2) In any proceedings against a railway company for the recovery of any sum in respect of any animal, the burden of proving the value of the animal and, where the animal has been injured, the extent of the injury, shall be upon the claimant.

64. (1) The liability of a railway company in respect of any article specified in the Schedule, and contained in any parcel or package, shall not, in any circumstances, exceed one hundred kwacha unless at the time of acceptance of such parcel or package by the railway company for carriage, the consignor or his agent declared that the value of such article exceeded one hundred kwacha and paid, or agreed to pay, such additional charges as may be specified in the Tariff Book in respect of such excess value; and thereupon the liability of the railway company shall not in any case exceed such declared value.

Limitation
of liability
for loss, etc.,
of specified
articles

(2) It shall be a condition of carriage by a railway company of any parcel or package containing any article, the value of which has been declared to be in excess of one hundred kwacha, that the contents of such parcel or package may be inspected by an authorised employee at the time of such declaration.

(3) In any proceeding against a railway company for the recovery of any sum in respect of any article, the value of which has been declared to be in excess of one hundred kwacha, the burden of proving the value of the article and of any loss or damage thereto shall be upon the claimant.

(4) The Minister may by statutory instrument amend the provisions of the Schedule or vary the amount of the maximum liability of any railway company as specified in this section.

65. The liability of a railway company in respect of any goods carried by it in relation to which an account false in any material particular has been given under subsection (1) of section *fifty* shall not in any case exceed the value of the goods as calculated in accordance with the description contained in such false account.

Limitation
of liability
for loss,
etc., where
false
account
given

Limitation
of liability
by contract

66. (1) The liability of a railway company for carriage of goods as proscribed in this Act shall not be limited in any manner otherwise than by contract made in accordance with the provisions of this section.

(2) A contract purporting to limit the liability of a railway company for carriage of goods shall, to the extent to which it purports to limit such liability, be void unless it is in writing and signed by or on behalf of the person delivering the goods to the railway company.

Liability for
loss, etc., of
goods

67. (1) Subject to the provisions of this Act, a railway company shall not be liable for the loss, misdelivery or detention of, or damage to, goods—

- (a) delivered to, or in the custody of, the railway company otherwise than for the purpose of carriage;
- (b) accepted by the railway company for carriage where such loss, misdelivery, detention or damage occurs otherwise than while the goods are in transit;

except where such loss, misdelivery, detention or damage is caused by want of reasonable foresight or care on the part of the railway company or of any of its employees or agents:

Provided that the railway company shall in no case be liable for such loss, misdelivery, detention or damage arising from—

- (i) act of God;
- (ii) act of war or an act of an enemy of the Republic;
- (iii) seizure under legal process;
- (iv) act or order of the Government;
- (v) act or omission of the consignor, consignee or depositor, or of any servant or agent of any such person;
- (vi) fire, floods, tempest, riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general;
- (vii) inherent liability to wastage in bulk or weight, latent or inherent defect or natural deterioration;
- (viii) deficiency in the contents of unbroken packages; or
- (ix) improper or insufficient packing, or leakage from defective drums, containers or packages.

(2) Where such loss, misdelivery, detention or damage occurs in relation to goods accepted by a railway company for carriage otherwise than while such goods are in transit, the limitation of the liability of the railway company contained in sections *sixty-three*, *sixty-four* and *sixty-five*, or under any contract under section *sixty-six*, shall apply.

(3) Where such loss, misdelivery, detention or damage occurs in relation to goods accepted by a railway company for warehousing, the limitation of the liability contained in section *sixty-five* shall apply.

68. (1) The liability of a railway company for any loss or misdelivery of, damage to or delay in the delivery of, any goods deposited in a cloakroom shall not in any case exceed one hundred kwacha unless at the time of such deposit the person depositing such goods declared that the value thereof exceeded that amount and paid, or agreed to pay, such additional charge as may be specified in the Tariff Book in respect of such excess value; and thereupon the liability of the railway company shall not in any case exceed such declared value.

Limitation of liability for loss, etc., of goods deposited in cloakroom

(2) For the purpose of this section, the expression "cloakroom" means any place provided by a railway company in connection with the transport services provided by it as a facility for the temporary deposit of goods by passengers and other persons.

69. (1) A railway company shall not be liable for any loss or damage caused by fire from any of its engines to any building, or any property therein, if any part of such building is within sixty metres of the rails of the railway company.

Liability for damage caused by fire

(2) Subject to the provisions of subsection (1), a railway company shall be liable for any loss or damage caused by fire from any of its engines where there is proof of negligence in the working of the construction of such engine.

(3) Subject to the provisions of subsection (1), a railway company shall be liable for any loss or damage caused by fire from any of its engines without proof of any such negligence as is mentioned in subsection (2) if—

- (a) such loss or damage is caused to the owner or occupier of any land which is contiguous to land occupied by the railway company; and
- (b) at the time of such loss or damage such owner or occupier maintained upon such land a firebreak in good condition; and
- (c) where no firebreak in good condition was maintained at the time by the railway company, such owner or occupier had given notice in writing of such fact to the railway company at least one month prior to the occurrence of such loss or damage; and
- (d) the owner or occupier suffering any such loss or damage gives to the railway company—
 - (i) within fourteen days of the occurrence of such loss or damage notice in writing thereof; and
 - (ii) within twenty-one days of the occurrence of such loss or damage, particulars in writing of his claim or damage suffered by him:

Provided that the maximum compensation payable by a railway company under the provisions of this subsection shall not exceed one thousand kwacha.

Burden of
proof

70. In any proceedings against a railway company for compensation under the provisions of sections *sixty-one*, *sixty-two* or *sixty-seven*, it shall not be necessary for the person claiming compensation to prove how such loss, misdelivery, damage, detention, delay or deviation referred to in those sections was caused.

Notice of
claim

71. (1) No person shall be entitled to compensation for non-delivery of the whole of a consignment of goods, or of any separate package forming part of such consignment, accepted by a railway company for carriage or warehousing unless a claim in writing, giving such particulars as may reasonably be necessary, is given to the railway company within six months of the date on which such goods were accepted by the railway company.

(2) No person shall be entitled to compensation for any goods missing from a packet or unpacked consignment of, or for misdelivery of, damage or delay to, detention of or deviation in the carriage of, any goods accepted by a railway company for carriage or warehousing unless—

- (a) the railway company is notified of such facts in writing within four days of the date on which such goods were delivered, or offered by the railway company for delivery, to the consignee or person entitled to take delivery thereof; and
- (b) a claim in writing, giving such particulars as may reasonably be necessary, is given to the railway company within one month of such date.

(3) Where the person claiming compensation proves that it was impracticable for him to notify, or give to the railway company his claim as set out in subsections (1) and (2), within the time specified therein, and that such notification or claim was made or given in reasonable time, nothing in those subsections shall prejudice the right of such person to obtain compensation.

Overcharge
and
undercharge

72. (1) Where the amount paid for the carriage of any passenger or goods by a railway company is found to be incorrect, then if such amount is—

- (a) an overcharge, the passenger or the person who paid the charge shall be entitled to a refund of the amount of the overcharge;
- (b) an undercharge, the railway company shall be entitled to collect the amount of the undercharge from the passenger or the person who paid the charge:

Provided that such overcharge or undercharge shall not be refunded or collected, as the case may be, unless a notice in

writing containing such particulars as may be reasonably necessary is given—

- (i) by the person claiming such overcharge to the railway company; or
- (ii) by the railway company to the person from whom the amount of such undercharge is claimed;

within six months after the commencement of the passenger's journey or the acceptance of the goods by the railway company, as the case may be, so however, that where such undercharge is caused by any information or description subsequently found to be incorrect, such period of six months shall commence from the discovery by the railway company of the correct information or description.

(2) Where a ticket issued under the provisions of this Act has not been used, a refund of the amount paid for such ticket shall be made if, within two months of the date of the expiry of the validity of such ticket, a notice in writing containing such particulars as may be reasonably necessary is given to the railway company by the person claiming such refund.

(3) Where the person claiming a refund under subsection (1) or (2) proves that it was impracticable for him to notify the railway company of his claim within the time specified in those subsections and that such notifications were given in reasonable time, nothing in those subsections shall prejudice the right of such person to obtain such refund.

PART XI

OFFENCES AND PENALTIES

73. Any person who by any wilful, negligent or careless act or omission obstructs or causes to be obstructed any train or vehicle using the railway, or endangers or causes to be endangered the safety of any person in or upon any train or vehicle using the railway, or aids, assists, counsels or procures any such act or omission shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding twenty-one years.

Endangering safety

74. Any person who—

- (a) unlawfully and maliciously puts, places, casts or throws upon or across any railway line any wood, stone or other matter or thing or unlawfully and maliciously takes up, removes or displaces any rail, sleeper or other matter or thing belonging to a railway company, or unlawfully and maliciously turns, moves or diverts any points or other machinery belonging to a railway company, or unlawfully and maliciously makes or shows, hides or removes any signal or light upon or near to any railway line, or unlawfully and maliciously does or causes to be done any other thing with intent to obstruct, upset,

Other serious offences

overthrow, damage or destroy any train or vehicle using such railway or to endanger the safety of any person travelling by or being upon such railway; or

- (b) unlawfully and maliciously throws or causes to fall or strike at, against, into or upon any train or vehicle used upon the railway any wood, stone or other matter or thing with intent to injure or endanger the safety of any person being in or upon such train or vehicle; or
- (c) unlawfully and maliciously sets fire to, destroys or in any way damages any railway track or way or the rails and appurtenances laid thereon or any station, engine house, warehouse or other building or any train, or vehicle belonging or appertaining to the railway; or
- (d) unlawfully and maliciously sets fire to any matter or thing being in or against or under any building or train or vehicle belonging to a railway company;

shall be guilty of an offence and liable upon conviction to imprisonment for a term not exceeding twenty-one years.

Minor
offences

75. Any person who—

- (a) not being specifically authorised in that behalf and not being an employee, agent or passenger of a railway company—
 - (i) is found during the hours of darkness on any premises occupied by the railway company;
 - (ii) is found in any area designated by the railway company as dangerous or restricted by the erection of notice boards to that effect; or
 - (iii) refuses to leave premises occupied by the railway company or any train or vehicle of the railway company after being lawfully required to do so by an employee of the railway company or a police officer;
- (b) being on any premises occupied by, or upon any train or vehicle of, a railway company—
 - (i) when called upon by an employee of the railway company or a police officer refuses to give his name and address, or gives a false name or address with intent to avoid prosecution; or
 - (ii) is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of any other person; or
 - (iii) discharges any firearm or does anything which may cause injury to any person on such premises or upon such train or vehicle; or

- (iv) commits any nuisance or act of indecency or uses profane, obscene, indecent or abusive language; or
 - (v) without lawful excuse contravenes any direction lawfully given by any employee of the railway company; or
 - (vi) save with the permission of an authorised employee, hawks, sells or exposes for sale any article or touts, applies for or solicits custom of any description; or
 - (vii) smokes in any part of such premises, train or vehicle bearing a notice that smoking is prohibited in that part; or
- (c) writes, draws or affixes any profane, obscene, indecent or abusive work, matter, representation or character upon any premises occupied by a railway company or upon any train or vehicle of a railway company; or
 - (d) defaces the writing on any board or any notice authorised by a railway company or upon any train or vehicle of a railway company; or
 - (e) damages or without lawful excuse interferes with any property of a railway company; or
 - (f) without lawful excuse, enters or leaves any train or vehicle of a railway company while it is in motion or elsewhere than at the place appointed by the railway company for passengers to enter or leave, or opens any outer door of any train while it is in motion; or
 - (g) in the absence of a gate-keeper, omits to shut or to fasten, if any form of fastener is provided, any gate on the railway as soon as such person or any animal, vehicle or other thing under his charge has passed through such gate; or
 - (h) knowing, or having reason to believe, that a train is approaching or without having exercised due care to ascertain whether a train is approaching, opens any gate, chain or bar set up on either side of a railway track or drives any animal, vehicle or other thing onto or across such railway track; or
 - (i) permits or allows any animal to stray on any properly fenced premises occupied by a railway company; or
 - (j) fails to deliver at the earliest possible opportunity to an authorised employee any property which there is reason to believe has been lost or forgotten and is found on any premises, train or vehicle of the railway company; or
 - (k) wilfully obstructs or impedes an employee of a railway company in the performance of his duties as such; or

- (l) gives or offers to any employee of a railway company any money or anything of value for the purpose of avoiding payment of any due to the railway company; or
- (m) unlawfully removes any property of or in use by a railway company, or permits any property of or in use by a railway company to be unlawfully in his possession or on his premises; or
- (n) throws from a train any article or substance likely to be a source of danger to, or to cause injury to, any other person; or
- (o) without the prior approval of the railway company, takes or sends or attempts to take or send upon any railway any dangerous animal or any animal not under proper control or any animal suffering from any contagious or infectious disease; or
- (p) being an employee of a railway company, receives from any passenger, or from any other person delivering goods to the railway company for carriage or warehousing, or from any other person making use of the facilities provided by the railway company, any money and fails within a reasonable time not exceeding half an hour to issue a ticket or other receipt for such money; or
- (q) without the permission of an authorised employee, travels in or upon any part of a train or vehicle of the railway company other than the part ordinarily provided for passengers during travel; or
- (r) wilfully obstructs any person acting under the instructions of a railway company in the lawful exercise of its power in setting out or constructing a line of railway, whether originally or for the purpose of any work being done under the provisions of section *fourteen* or in carrying out any such work, wilfully pulls up or removes any poles or stakes driven into the ground, or defaces or destroys any marks;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five hundred kwacha or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Travelling
without
valid
ticket, etc.

76. (1) Any person who—

- (a) travels on a train or vehicle of a railway company without a valid ticket or free pass with intent to avoid payment of any fare for which he is liable; or

- (b) having a valid ticket or free pass for a certain distance, knowingly travels on a train or vehicle of a railway company beyond that distance with intent to avoid payment of the fare for the additional distance; or
- (c) travels on a train or vehicle of a railway company by a class higher than the class by which the valid ticket or free pass he holds entitles him to travel, with intent to avoid payment of any additional fare; or
- (d) wilfully refuses to pay the fare and excess charge which, on demand, he is liable to pay under section *forty-six*; or
- (e) travels on a train or vehicle of a railway company with a ticket or free pass, or any portion thereof, purchased or obtained by him from any person other than an authorised employee;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding two hundred kwacha or to imprisonment for a term not exceeding two months and, in addition, shall be liable to a penalty equal to the fare and excess charge for which he is liable under section *forty-six* or, in the case of an offence under paragraph (e), equal to the single fare for the journey in the class by which the offender has travelled, unless the offender has already paid such penalty to an authorised employee.

(2) Where any penalty imposed under this section is recovered, the amount thereof shall be paid to the railway company concerned.

(3) Nothing in this section shall prejudice the right of the railway company concerned to recover any amounts due from the offender by any other lawful means.

77. Any person who, being a passenger on any train or vehicle of a railway company—

Offences by
passengers

- (a) enters any part thereof reserved for the use of another person, or already containing the maximum number of persons authorised for that part, and refuses to leave that part after being required to do so by an authorised employee; or
- (b) resists or obstructs the lawful entry of any person into any part thereof not already containing the maximum number of persons authorised for that part; or
- (c) refuses or fails to obey any lawful direction of an authorised employee relating to the requirements of section *forty-five*; or
- (d) knowingly enters or refuses to leave any part thereof not intended for the use of passengers; or

- (e) without reasonable cause, uses or interferes with any means of communication provided thereon for communication between passengers and any employee therein of the railway company; or
- (f) knowingly enters, or refuses to leave, after being required so to do, any part thereof provided for the exclusive use of persons of a different sex, or entitled to a different class of accommodation;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred kwacha or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.

Offences
relating to
tickets

78. Any person who—

- (a) not being an authorised employee or agent of a railway company, sells or parts with any ticket or free pass, or any portion thereof, in order to enable any other person to travel therewith on a train or vehicle of the railway company; or
- (b) purchases or obtains any ticket or free pass, or any portion thereof, from any person other than an authorised employee or agent of a railway company; or
- (c) wilfully alters, obliterates or defaces any ticket or free pass with intent to render any material portion thereof illegible;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding two hundred kwacha or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.

Forgeries,
etc., of
tickets

79. Any person who—

- (a) obtains by false pretences or other fraudulent means any ticket or free pass issued by a railway company; or
- (b) with intent to defraud, counterfeits, forges or alters any ticket or free pass; or
- (c) utters or in any way publishes any such forged, counterfeited or altered ticket or free pass;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one thousand kwacha or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment and shall, in addition, be liable to a penalty equal to the fare due in respect of any journey travelled by means of any such ticket or free pass together with the excess charge which on demand he is liable to pay under section *forty-six*.

80. Any person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document which is required or authorised to be made under this Act for use by a railway company shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding two hundred kwacha or to imprisonment not exceeding two months, or to both such fine and imprisonment.

False
returns

81. (1) Any person who, in contravention of the provisions of section *fifty-four*—

Unlawfully
transporting
dangerous
goods

(a) takes with him any goods to which that section applies upon any train or vehicle of a railway company; or

(b) delivers any such goods to a railway company for carriage or warehousing;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one thousand kwacha or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(2) Any person who is convicted of an offence under this section shall also be liable for any loss, injury or damage which may be caused by reason of such goods having been so taken upon such train or vehicle or delivered to the railway company for carriage or warehousing; and the court which convicts such offender may order him to pay the amount of any such loss, injury or damage to the person suffering such loss, injury or damage.

82. (1) Any person who commits any offence under section *seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven* or *seventy-nine* may be arrested without warrant by any authorised employee or by a police officer and shall thereupon, with the minimum possible delay, be taken before a magistrate having jurisdiction to try him or to commit him for trial.

Power of
arrest,
removal
and place
of trial

(2) Any person who commits any offence against this Act, other than an offence mentioned in subsection (1), may be arrested without warrant by any authorised employee or by a police officer if—

(a) there is reason to believe that such person will abscond; or

(b) such person refuses on demand to give his name and address; or

(c) there is reason to believe that either the name or the address given by such person is false;

and shall thereupon, with the minimum possible delay, be taken before a magistrate having jurisdiction to try him or to commit him for trial:

Provided that, save where there is reason to believe that such person will abscond, he shall, if his true name and address are ascertained, be released on his executing a bond without sureties for his appearance before a magistrate when required.

(3) Any person who commits an offence under section *seventy-five, seventy-six, seventy-seven or eighty-one*, may be required by any authorised employee or by a police officer to leave the premises occupied by the railway company or the train or vehicle, as the case may be, in which such person is at the time of the commission of the offence; and, if such person fails to comply with such requirement, he may be removed therefrom with such force as may be reasonably necessary in the circumstances.

(4) A person charged with an offence under this Act may be proceeded against, tried and punished in any place in which he may be in custody for that offence as if that offence had been committed in such place; and the offence shall for all purposes be deemed to have been committed in that place

Offences
which are
offences
under other
laws.
Cap. 146

83. Any person who commits an offence under this Act, which is also an offence under the Penal Code or under any other written law, may be proceeded against under this Act or under the Penal Code or under such other written law and the provisions of section *eighty-four* shall apply to all such proceedings.

Recovery
of fees and
damages

84. A court may order any person convicted before it of an offence under this Act to pay the fare or other charges shown to be due by such person to any railway company, or any damages in respect of injury caused in the commission of the offence by such person to property or premises owned, used or occupied by any railway company, or any costs or expenses incurred by any railway company in the prosecution of such person for the offence, and any sum ordered to be paid may be recovered in accordance with the provisions of the Criminal Procedure Code relating to the recovery of fines.

Cap. 160

Brief
particulars
of offences
and
penalties to
be exhibited

85. Every railway company shall publish brief particulars of every offence for which any penalty is imposed by this Act affecting persons other than its employees and of the amount of fine or the term of imprisonment for every such offence, and shall cause such particulars to be exhibited at every booking office and such other places as the Minister may direct and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed:

Provided that the failure to publish such brief particulars of any such offence or penalty or the failure to exhibit them shall not be a defence to a charge in respect of any such offence.

PART XII

OFFENCES BY EMPLOYEES OF RAILWAY COMPANY
AND PENALTIES

86. An employee of a railway company who, with intent to defraud, demands, solicits or receives from any passenger, or from any person delivering goods to such railway company for carriage or warehousing or from any person making use of the facilities provided by such railway company, any greater or lesser amount than he should otherwise demand or receive; or similarly demands, solicits or receives any other thing of value, shall be guilty of an offence and liable upon conviction to a fine not exceeding one thousand kwacha or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

Employee of railway company demanding improper amount

87. (1) Where an employee of a railway company dies or leaves the service of the railway company and, at the time of the death or termination of service, any property of such railway company was in his possession or custody or any premises of the railway company were occupied by him, it shall be the duty of such employee, or in the event of his death, of the person in whose possession or custody such property may be or who may be occupying such premises, as soon as practicable, to deliver such property to the railway company or to vacate such premises, as the case may be.

Property of railway company in custody of its employee, etc.

(2) If any property or premises to which subsection (1) refers is not so delivered or vacated, as the case may be, the railway company shall give notice in writing to the person appearing to it most likely to be in possession of such property or in occupation of such premises to deliver to the railway company such property or vacate such premises within such time as may be specified in the notice; and if such property is not so delivered or such premises are not so vacated within such time, the railway company may, without prejudice to any other means of recovery of such property or premises, apply to a magistrate for an order empowering a police officer, if necessary by force, to enter and search any house or building where such property is believed to be and to deliver such property if found to the railway company or, as the case may require, to evict from such premises any person found therein.

88. An employee of a railway company who is convicted of an offence under section *eighty-nine* or *ninety* shall be dismissed from the service of the railway company without any further proceedings being taken.

Dismissal of convicted employees

89. An employee of a railway company who—

- (a) by refusal or wilful neglect to carry out his duties properly; or
- (b) by carrying out his duties recklessly or with gross negligence; or

Causing dangerous situation by neglect of duty

- (c) by wilful disregard of any regulation, lawful order direction or rule applying to him or given to him; or
- (d) by being under the influence of alcohol or dangerous drugs; or
- (e) by contravening any of the provisions of this Act;

causes or participates in causing a situation—

- (i) which leads to or might lead to the happening of a reasonably foreseeable contingency, to the derailment of any train or vehicle of such railway company or to a collision involving the property of such railway company; or
- (ii) in which the safety of persons travelling by or working on the railway is or might, on the happening of a reasonably foreseeable contingency, be endangered;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand kwacha or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

Drunkenness on duty

90. An employee of a railway company who while—

- (a) on duty on any train or vehicle; or
- (b) present, even if not on duty, on any locomotive or in any guard's van; or
- (c) on duty having responsibilities related to the movement of traffic or the operation or maintenance of any railway signalling or communication equipment or any part of the permanent way or the repair of any train or vehicle;

is found having consumed alcohol in such quantity that the proportion thereof exceeds the prescribed limit, shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand kwacha or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

Breath test

91. (1) Subject to the provisions of subsection (2), an employee of a railway company may be required to provide a specimen of breath for a breath test by an authorised officer, if such authorised officer has reasonable cause to suspect such employee of having alcohol in his blood.

(2) An employee of a railway company shall not be required to provide the specimen mentioned in subsection (1) while at a hospital as a patient if the medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or upon being notified, objects to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care of the patient.

(3) An employee of a railway company who, without reasonable excuse, fails to provide a specimen of breath for a breath test under the provisions of subsection (1), shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand kwacha or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

92. (1) Where an employee of a railway company refuses to provide a specimen of breath for a breath test under the provisions of section *ninety-one* the authorised officer shall require such employee to submit himself to a laboratory test as soon as practicable thereafter.

Laboratory
test

(2) If in consequence of a breath test carried out by him under the provisions of section *ninety-one* it appears to an authorised officer that the device by means of which such test is carried out indicates that the proportion of alcohol in such employee's blood exceeds the prescribed limit, such authorised officer shall require such employee to submit himself to a laboratory test as soon as practicable thereafter.

(3) An employee of a railway company who has been required to submit himself to a laboratory test under subsection (1) or (2) shall, when required by a medical practitioner, provide a specimen of blood or urine for a laboratory test.

(4) An employee of a railway company who refuses to submit himself to a laboratory test when required by an authorised officer to do so under subsection (1) or (2), or who fails to provide a specimen when required to do so by a medical practitioner under subsection (3), shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand kwacha or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

(5) No employee of a railway company shall be treated for the purpose of subsection (4) as failing to provide a specimen unless—

- (a) he is first required to provide a specimen of blood, but fails to do so;
- (b) he is then required to provide within the hour two specimens of urine, but fails at any time within such hour to provide them; and
- (c) he is again required to provide a specimen of blood, but fails to do so.

(6) The first specimen of urine provided as a result of the requirement under paragraph (b) of subsection (5) shall be disregarded for the purposes of section *ninety*.

(7) An authorised officer on requiring an employee to submit himself for a laboratory test pursuant to subsection (2), or a medical practitioner on requiring him to provide a specimen

pursuant to subsection (3), shall warn such employee that failure to submit to a laboratory test or failure to provide a specimen of blood or urine, as the case may be, may render him liable to a fine or imprisonment or to both, and if the authorised officer or the medical practitioner, as the case may be, fails to do so, the court before which such employee is charged with an offence under this Part may, for purposes of mitigation, take such failure into account.

Interpre-
tation

93. For the purposes of this Part—

(a) unless the context otherwise requires—

“authorised officer” means a police officer, a medical practitioner, a station master, or an Inspector of Railways or any other person authorised in writing by a railway company to require an employee of such railway company to provide a specimen of breath for a breath test;

“breath test” means a test for the purpose of obtaining an indication of the proportion of alcohol in a person’s blood, carried out in accordance with the maker’s instructions for the use of the device, on a specimen of breath provided by that person by means of a device of a type approved from time to time by statutory instrument made by the Minister for the purpose of such a test;

“fail”, in relation to providing a specimen, includes refuse, and “failure” shall be construed accordingly;

“hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients;

“laboratory test” means the analysis of a specimen provided for the purpose;

“medical practitioner” means a person registered on the register of fully registered, provisionally registered or temporarily registered medical practitioners under the provisions of the Medical and Allied Professions Act;

“prescribed limit” means 80 milligrammes of alcohol in 100 millilitres of blood or such other proportion as may be prescribed by statutory instrument made by the Minister;

(b) a person shall be treated as providing a specimen of blood if, but only if, he consents to the specimen being taken by a medical practitioner and it is so taken, and shall be treated for those purposes as providing it at the time it is so taken;

- (c) references to providing a specimen of breath for a breath test are references to providing a specimen thereof in sufficient quantity to enable that test to be carried out;
- (d) 107 milligrammes of alcohol in 100 millilitres of urine shall be treated as equivalent to 80 milligrammes of alcohol in 100 millilitres of blood, and the power conferred by paragraph (a) in the definition of "prescribed limit" to prescribe some other proportion of alcohol in the blood shall include power to prescribe a proportion of alcohol in the urine, which shall be treated as equivalent to the prescribed proportion of alcohol in the blood.

PART XIII

GENERAL PROVISIONS

94. (1) Subject to the provisions of this section, nothing in this Act shall prohibit a railway company from carrying passengers or goods on a railway which is under construction or which has not been declared open:

Use of
railway
under
construc-
tion

Provided that no such railway shall be used for the carriage of passengers or goods unless the Minister has in writing signified his approval for any such use upon receipt of an application in that behalf made in writing by the railway company.

(2) The Minister may, in granting approval under the provisions of subsection (1), specify the conditions, restrictions and other measures which shall apply to the use of any such railway as is referred to in the said subsection in order to ensure the safety and protection of passengers or goods to be carried thereon.

(3) Where passengers or goods are lawfully conveyed on any railway which is under construction by a railway company or which has not been declared open, the railway company may—

- (a) fix rates, fares, dues and other charges in respect of any services rendered by it on any such railway;
 - (b) determine conditions of service of persons employed on any such railway;
 - (c) limit or restrict the type and nature of goods which may be accepted for carriage on any such railway;
 - (d) limit its liability for the loss of, damage or delay to, any goods occasioned in the course of such carriage;
- and any such rates, fares, dues, charges, conditions of service, limitations or restrictions may be different from those applying in respect of any railway which has been declared open.

(4) The provisions of Parts II and IX shall not apply to a railway under construction.

Limitation

95. Where any action or legal proceeding is commenced against a railway company for any act done in pursuance of, or in the exercise or purported exercise of its powers under a railway permit or under this Act, or in respect of any alleged neglect or default in the exercise of any such powers, the following provisions shall apply:

- (a) the action or legal proceeding shall not be commenced against such railway company until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding has been served upon an authorised employee of such railway company by the plaintiff or his agent; and
- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months of the occurrence of the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months after the cessation thereof.

Medical examination of person claiming compensation

96. Whenever any person claims compensation against a railway company in respect of any injury alleged to have been suffered by him as a result of the operations of such railway company any court or person having by law, or by consent of the parties, authority to determine the claim may order that the person injured be examined by a medical practitioner named in the order and may also make such order with respect to the costs of the examination as may be deemed fit.

Arrest of employee of railway company

97. (1) Where the safe operation of any transport service of a railway company is likely to be endangered by the immediate arrest, with or without warrant, of any of its employees, the police officer or any other person whose duty it is to make such arrest shall—

- (a) request the superior officer of such employee to relieve such employee of his duties as soon as practicable; and
- (b) refrain from arresting such employee until he is so relieved and shall, until he is so relieved, take all necessary steps to ensure that such employee does not escape.

(2) Where any request is made to a superior officer under this section, it shall be his duty to relieve the employee in respect of whom the request is made, with the minimum possible delay.

Restriction on execution against property of railway company

98. Notwithstanding anything to the contrary contained in any written law, where any judgment or order has been obtained against a railway company, no execution or attachment, or process in the nature thereof, shall be issued against

such railway company or against any of its property; but such railway company shall, within thirty days, do all that is necessary to comply with such judgment or order.

99. Subject to the approval and direction of the Minister responsible for home affairs, a railway company may, by notice in writing, authorise any of its employees to maintain order upon any premises occupied by such railway company or in any of its trains or vehicles and any employee so authorised shall, in the performance of such duty, have all the powers, rights, privileges and protection of a police officer.

Maintenance
of order on
premises,
trains,
vehicles, etc.,
of railway
company

100. (1) Subject to the provisions of this Act, a railway company may make rules for determining the conditions of service of its employees and for regulating their conduct while on duty and in particular, but without prejudice to the generality of the foregoing, such rules may relate to—

Conditions
of service
and
regulation
of conduct
of employees

- (a) the appointment, dismissal, discipline, hours of employment, pay and leave of employees;
- (b) appeals by employees against dismissal or other disciplinary actions;
- (c) the granting of pensions, gratuities and other terminal benefits to employees and their dependants and to the dependants or estates of deceased employees;
- (d) the establishment and administration of pension schemes and pension funds, medical aid schemes and medical aid funds and other schemes and funds of any kind whatsoever for the benefit of employees or their dependants or the dependants of deceased employees and the appointment, removal and replacement of trustees of any such scheme or fund;
- (e) the deduction from the salary or wages of employees of—
 - (i) contributions payable to any fund in terms of the conditions of service;
 - (ii) rent payable to such railway company for housing or accommodation provided by it;
 - (iii) repayment of money lent by such railway company together with interest thereon;
 - (iv) payment due to such railway company in respect of any electricity, water or other service.

(2) Different rules may be made under this section in relation to different categories of employees, and any such rules may be made so as to have effect as from a date prior to the date on which they are made when they relate to—

- (a) a pension scheme or pension fund; or
- (b) conditions of service and are either generally beneficial to the persons affected or give each such person an option to accept such revised conditions of service or to remain on his existing conditions of service.

Rules
by railway
company

101. (1) Subject to the provisions of this Act, a railway company may make rules generally with respect to the services performed and the facilities provided by it under this Act, for the maintenance of order on any premises occupied by it or on any train or vehicle operated by it and, in particular, but without prejudice to the generality of the foregoing, with respect to—

- (a) the times of arrival and departure of any train or vehicle operated by it, and the manner and speed at which such train or vehicle may be operated;
- (b) the loading or unloading of any such train or vehicle, and the weights or dimensions of goods to be carried therein;
- (c) the collection, receipt, storage, conditions of carriage and delivery of goods carried by it, and the disposal of perishable or unclaimed goods;
- (d) the accommodation and facilities provided for, and the conditions of carriage of, passengers and luggage carried by it;
- (e) the reservation of any portion of any such premises, train or vehicle, for the exclusive use of its employees or of persons of different sexes or categories;
- (f) the prohibition of smoking in any portion of any such premises, train or vehicle;
- (g) the proper control, management and protection of any such premises, train or vehicle, and any property belonging to it;
- (h) the control of all persons on any such premises, the maintenance of order thereon and the admission thereon, or the exclusion therefrom, of persons, and the charges if any, to be made for such admission;
- (i) the defining of dangerous or offensive goods and the conditions under which they may be carried or stored by it;
- (j) the insurance of passengers and goods carried by it, and of goods stored by it;
- (k) the sale of any article on any premises occupied by it;
- (l) the fixing of fares, rates and other charges, for or in connection with the carriage of passengers and goods and the storing of goods by it and the payment, exemption from payment, refund or remission thereof;
- (m) the control of the use of lights or illuminated signs showing any or all of the colours, or shades of the colours, red, green, white or amber, in or near any premises occupied by it;

- (n) the prevention of fraudulent practices by or in respect of persons carried by, or otherwise using any service performed or facilities provided by it;
- (o) the safety and protection of passengers and goods carried, and of persons employed, by it;
- (p) the procedure to be followed in the conduct of inquiries into accidents;
- (q) the sale, disposal or writing off of any property or assets belonging to it;
- (r) the acceptance of any tender for goods or services;
- (s) any agreement providing for the charging of special rates or fares for the carriage of goods or passengers by rail;
- (t) any general revision of salaries, wages or allowances of persons employed by it;
- (u) any matters relating to its accounts and finances;
- (v) any matter authorised to be prescribed under this Act.

102. A railway company shall not exercise any of its powers contained in section *forty-three, forty-eight, one hundred, or one hundred and one* without first obtaining the written approval of the Minister in that behalf.

Approval of
Minister

103. The Minister may, by statutory instrument, make regulations prescribing anything which may be prescribed under this Act and in respect of which no other prescribing authority is specified; and may, in like manner, make regulations for the better carrying out of the provisions of this Act.

Regulations
by Minister

104. The Chief Justice may, by statutory instrument, make rules with respect to—

Rules by
Chief
Justice

- (a) the making and hearing of applications under sections *fourteen* and *nineteen*;
- (b) the period within which appeals under section *twenty-six* may be brought; and
- (c) any other matters connected with or incidental to the foregoing.

105. (1) Subject to the other provisions of this section, the Zambia Railways Act is hereby repealed.

Repeal and
savings.
Cap. 767
Cap. 767

(2) Notwithstanding the repeal of the Zambia Railways Act, the provisions of subsections (1) and (2) of section *eighty-nine* of that Act shall continue in force as if they are part of this Act.

(3) Nothing in subsection (1) shall be deemed to affect any rules, by-laws, conditions of carriage, tariffs and fares or any direction whatsoever relating to the operation, use or regulation of Zambia Railways which was in force at the commencement of this Act, and all such rules, by-laws, conditions of carriage, tariffs and fares or direction shall continue to have effect as if they have been made or given under this Act.

SCHEDULE

(Section 64)

1. Gold, silver and other precious metals, coined or uncoined, manufactured or unmanufactured.
2. Precious and semi-precious stones, jewellery and trinkets.
3. Watches, clocks and timepieces of any description.
4. Government securities.
5. Stamps.
6. Bills of exchange, promissory notes, bank notes, currency notes and orders or other securities for payment of money.
7. Maps, plans, writings and title-deeds.
8. Paintings, engravings, lithographs, pictures, photographs, carvings, statuary, sculpture, antique furniture and other works of art.
9. Art, pottery, glass, china and marble.
10. Cameras and cinematograph apparatus (including films).
11. Lace, furs and feathers.
12. Opium and narcotic preparations.
13. Musk, sandalwood oil and other essential oils used in the preparation of perfumes.
14. Pyrethrum extract.
15. Musical and scientific instruments, wireless and television sets, radio-grams, record players, tape recorders and all other electronic instruments and equipment.
16. Ivory in any form.
17. Any article the value of which exceeds two thousand kwacha per tonne.