

THE TANZANIA-ZAMBIA RAILWAY ACT, 1975

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FIRST SCHEDULE

SECOND SCHEDULE

THE UNITED REPUBLIC OF TANZANIA



No. 23 OF 1975

I ASSENT,

Julius N. Nyerere

President

11TH AUGUST, 1975

An Act to repeal and replace the Tanzania-Zambia Railway Authority Agreement (Implementation) Act, 1968; to provide for giving effect to certain provisions of an Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of Zambia relating to the Tanzania-Zambia Railway Project; to provide for the establishment of the Tanzania-Zambia Railway Authority, to provide for and regulate the manner in which the Tanzania-Zambia Railway shall be operated; and to provide for matters connected with or incidental to the foregoing

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ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY

1. This Act may be cited as the Tanzania-Zambia Railway Act, 1975, and shall come into operation on such date as the Minister may by notice in the Gazette, appoint.

Short title and commencement

2.-(1) In this Act, unless the context otherwise requires- "agent" means a person employed or authorized by the Authority to act on its behalf;

Interpretation

"Agreement" means the Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of Zambia executed on the second day of May, 1975, which Agreement is set out in the First Schedule;

- "animals" means animate objects of every kind except human beings;
- "authorized employee" means an employee authorized by the General Manager to exercise the powers or perform the duties in relation to which the expression is used;
- "Authority" means the "Tanzania-Zambia Railway Authority established and deemed to have been established by section 4;
- "Board" means the Board of Directors established by Article III of the Agreement;
- "booking office" means a place at which tickets may be obtained or charges paid to the Authority;
- "charges" means all sums received or receivable, charged or chargeable, for, or in respect of, the carriage or warehousing of goods by the Authority or for, or in respect of, any other services or facilities provided by the Authority,
- "consignee" means the person, firm or body to whom goods accepted for carriage by the Authority are addressed;
- "consignment" means one or more packages of goods or a quantity of loose goods tendered for carriage by one consignor to one consignee on one consignment note and accepted for carriage by the Authority;
- "consignor" means the person, firm or body who has tendered goods which have been accepted for carriage by the Authority;
- "Contracting State" means the United Republic of Tanzania or the Republic of Zambia;
- "Council" means the Tanzania-Zambia Railway Council of Ministers referred to in the Agreement;
- "customs law" means any law relating to the collection of customs or excise duties;
- "Deputy General Manager" means the holder of the office of Deputy General Manager referred to in the Agreement;
- "employee" means any person in the service of the Authority;
- "fare" includes all sums received or receivable, charged or chargeable, for the carriage of a passenger by the Authority;
- "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 is not less than ten metres (measured from the boundary of the land upon which a railway is constructed) in width, or of such other dimensions or sited at such places as may have been agreed upon between the General Manager and the owner or occupier of the land contiguous to any land occupied by the Authority on which a railway is constructed;
- "free pass" means any written authority for the carriage of any person as a passenger by the Authority without payment of any fare!;
- "functions" includes duties and powers;
- "General Manager" means the holder of the office of General Manager referred to in the Agreement;

- "goods" includes luggage, animals (whether alive or dead) and all other movable property of any description;
- "Government", in relation to either of the Contracting States, includes any person or authority authorized to act on behalf of that Contracting State;
- "light engine" means a locomotive without a vehicle attached to it;
- "loan obligations to the People's Republic of China" means the loan obligations of the Government of the United Republic of Tanzania and the Government of the Republic of Zambia to the Government of the People's Republic of China incurred for the purpose of the Tanzania-Zambia Railway pursuant to the Agreement between the Government of the United Republic of Tanzania, and the Government of the Republic of Zambia and the Government of the People's Republic of China signed in Peking on the fifth day of September, 1967.
- "luggage" means such articles of personal apparel or for personal use, together with their containers, 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;
- "Minister" means the Minister for the time being responsible for railways;
- "passenger" means any person lawfully traveling on any train or vehicle provided by, or under the control of the Authority;
- "perishable goods" means goods liable to rapid deterioration and, in particular, means fish, fruit, vegetables, potatoes, plants, bread, meat, game, butter, eggs, milk, cheese, birds, poultry, small animals, and any other thing which the General Manager may, by notice in the *Gazette*, declare to be perishable goods;
- "purposes of the Authority" means any purposes necessary or desirable for the performance of the services, or the provision of any facilities, which the Authority is authorized to perform or provide under this Act;
- "railway" means the whole or any portion of the lines of railway operated by the Authority and all other movable and immovable property vested in, or placed at the disposal of, the Authority for use in connection therewith;
- "railway station" includes a road service station;
- "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 by the Authority or for, or in respect of any other service performed or facility provided by the Authority;
- "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 the Authority as a passenger between the places specified thereon on the number of occasions or during the period specified thereon;

- "Tariff Book" means the Tariff Book published by the Authority under section 66;
- "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 the Authority;
- "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 the railway;
- "warehouse" includes any building, place or vehicle when used by the Authority 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 purposes of this Act, goods shall be deemed to be in transit from the time the goods are accepted by the Authority 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 Authority, the goods have been consigned; and thereafter the goods shall, so long as they remain in the custody of the Authority, be deemed to be in such custody otherwise than for the purpose of carriage:

Provided that-

- (i) where such 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 such goods are perishable goods and the Authority, in the exercise of its powers under this Act, disposes of such 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 such goods are, in respect of their carriage by the Authority, consigned to a place at which the Authority 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 a place;
- (iv) where such goods are consigned for delivery to a place other than a railway station by means of a delivery service operating from a railway station by the Authority and such goods cannot, due to causes beyond the control of the Authority,

be delivered at such a place within twenty-four hours after the time of their arrival at the railway station from which the delivery service is operated, such goods shall cease to be in transit after the time when such goods are tendered for delivery at such a 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 documents issued under this Act, unless the context otherwise requires-

- (a) "accepted by the Authority" means accepted by an employee or agent for carriage or warehousing by the Authority in accordance with the provisions of this Act:

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

- (b) "carried by the Authority" means carried by the Authority in accordance with the provisions of this Act;
- (c) "operated by the Authority" means operated by the Authority in accordance with the provisions of this Act;
- (d) "possession of the Authority" means the possession by any employee in the course of his duty;
- (e) "premises occupied by the Authority" means premises vested in or placed at the disposal of the Authority for the purposes of the Authority;
- (f) "property of the Authority" means property vested in or placed at the disposal of the Authority for the purposes of the Authority;
- (g) "services or facilities provided by the Authority" means services performed or facilities provided by the Authority in accordance with the provisions of this Act;
- (h) "vehicle of the Authority" includes a vehicle operated on behalf of the Authority.

PART II

POWERS OF THE COUNCIL

3. (1) The Council may give to the Board directions as to the performance by the Board of its functions in relation to matters which appear to the Council to affect the public interest, and the Board shall give effect to any such directions.

Power of Council to give directions to Board

(2) It shall be the duty of the Council to give directions to the Board from time to time on all matters in respect of which the Board requires the prior consent or approval of the Council under this Act.

PART III

TANZANIA-ZAMBIA RAILWAY AUTHORITY

Establish-
ment of
Authority

4. There is hereby established the Tanzania-Zambia Railway Authority, which shall be deemed to have been established as from the third day of October, 1968 pursuant to an Agreement made between the Government of the United Republic of Tanzania and the Government of the Republic of Zambia on that date.

Authority
to be body
corporate

5. (1) The Authority shall have within the United Republic the capacity of a body corporate with perpetual secession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may do by law and as are necessary for, or incidental to, the carrying out of its functions and powers as set out in this Act.

(2) The Authority shall have the power to perform any of the functions conferred upon it by the Agreement and to do all things which the Board considers necessary or desirable for the performance of those functions.

(3) The provisions of subsection (2) relate only to the capacity of the Authority as a body corporate and nothing in that subsection shall be construed as authorizing the disregard by the Authority of any written law or as affecting any power of the Authority conferred by any written law.

Vesting of
movable
assets in
Authority

6.-(1) All movable property in respect of which loan obligations to the People's Republic of China have been incurred is, to the extent that the Government of the United Republic has title to such property, hereby vested in the Authority.

(2) All movable property in respect of which loan obligations to the People's Republic of China may hereafter be incurred shall, to the extent that the Government of the United Republic has title to such property, vest in the Authority on the date when such loan obligations arise.

Vesting of
immovable
assets in
Authority

7.-(1) The Authority shall, without further grant or assurance, have power to enter upon, take possession of, hold, retain and use any building (including the cartilage thereof) and land on or over which civil engineering works have been constructed where, in respect of such building or civil engineering works, as the case may be, loan obligations to the People's Republic of China have been incurred.

(2) The area of land on or over which the Authority may exercise the rights conferred upon it by subsection (1) shall be delineated on a map or maps prepared for that purpose by the Government after consultation with the Authority and a map or maps so prepared shall in any proceedings in any court of law arising out of the exercise or purported exercise of such rights be conclusive evidence of the physical extent thereof.

8. (1) The Authority shall be liable to repay to the Government of the United Republic of Tanzania and the Government of the Republic of Zambia a sum equivalent in the aggregate to-

Liability of Authority

- (a) the amount of the loan obligations to the People's Republic of China; and
- (b) the amount contributed, from time to time, by the United Republic of Tanzania and the Republic of Zambia to the funds and resources of the Authority.

(2) The sum referred to in subsection (1) shall be paid by the Authority in such installments, together with such interest thereon, as the Council may, from time to time, prescribe:

Provided that in respect of each installment or payment of interest so prescribed the Government of the United Republic of Tanzania shall be entitled to one half and the Government of the Republic of Zambia to the other half.

9. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Authority by any person generally or specifically authorized by the Authority for that purpose.

10. Any document purporting to be a document duly executed or issued under the seal of the Authority or on behalf of the Authority shall be received in evidence and be deemed to be a document executed or issued, as the case may be, without further proof, unless the contrary is shown.

Proof of documents

11. The application of the seal of the Authority shall be authenticated by the signatures of the chairman of the Board or some other member of the Board authorized by the Board to authenticate the application of the seal thereof, and of the General Manager or some other person in the service of the Authority authorized by the Board to act in his stead in that behalf.

Application of seal of Authority

PART IV

FUNCTIONS AND POWERS OF THE AUTHORITY

12. It shall be the duty of the Authority to provide or to secure and promote the provision of an efficient and adequate system of public transport of passengers and goods by rail between and within the Contracting States with due regard to economy and safety of operation, and to take such steps as may appear to the Authority requisite or expedient for improving or extending or for securing and promoting the improvement or extension of transport facilities and services by rail between and within the Contracting States in such a manner as to provide most efficiently and conveniently for the needs of the public, agriculture, commerce, industry and mining.

General duty of Authority

Railway
develop-
ment plan

13.-(1) The Authority shall from time to time prepare, review and revise a railway development plan.

(2) The railway development plan shall, in the light of the policy of the Contracting States and of any direction given to the Board by the Council, assess the transport facilities and services that should be provided by the Authority in the future for such period of years as may in the opinion of the Authority be appropriate in carrying out the general duty of the Authority under section 12 and such plan shall state how the Authority proposes to provide and maintain such transport facilities and services, and show the expenditure from capital, revenue, renewals and any other accounts estimated to be required for those purposes during the period to which the plan relates and how it is proposed to meet such expenditure.

Powers of
Authority

14.-(1) The Authority shall have power subject as hereinafter provided, to do anything and to enter into any transaction which in the opinion of the Board is calculated to facilitate the performance by the Authority of its duty under section 12 or which is incidental or conducive thereto, including, in particular, but without prejudice to the generality of the foregoing, power -

- (a) to carry passengers and goods by rail and auxiliary road services;
- (b) to engage in any industrial business, including manufacturing and the provision of maintenance and repair services, at any foundry, workshop or other factory owned or operated by the Authority, so however, that the Authority shall not establish any foundry, Workshop or factory solely for the purpose of engaging in any business that would be outside its powers if it were not for the provisions of this paragraph;
- (c) to store goods within the Contracting States, whether or not those goods have been or are to be carried by the Authority, so however, that facilities for the storage of goods which have not been or are not to be carried by the Authority shall not be provided by the Authority except on premises where such facilities are provided for the storage of goods carried or to be carried by the Authority;
- (d) to provide for the consignment of goods on behalf of other persons from any place in the Contracting States, or from any place to which the Authority has itself carried the goods in question, to any other place, whether in the Contracting States or elsewhere;
- (e) to provide within the Contracting States both for passengers and other persons, hotels, hostels, other living accommodation and places of refreshment; and
- (f) to provide in the Contracting States such other amenities and facilities for passengers and other persons making use of the services provided by the Authority as the Authority may consider necessary or desirable.

(2) Subject to the provisions of this Act, the powers conferred by subsection (1) shall include all such powers as are necessary for the purposes of the Authority and in particular, but without prejudice to the generality of the foregoing, shall include power—

- (a) to operate trains and auxiliary road services, and to construct, manufacture, purchase, maintain and repair anything required for the purposes of the Authority;
- (b) to acquire, construct, manufacture, maintain or repair waterworks or electric generating plant or any other works, plant or apparatus necessary or desirable for the supply or transmission of water or of electrical energy for the purposes of the Authority and to supply such water or electrical energy to any person;
- (c) subject to the approval of the Government, to alter the course of or raise or lower the level of, any watercourse or road if such alteration, raising or lowering is necessary for the purposes of the Authority;
- (d) to determine, impose or levy rates, fares and other charges for any service performed by the Authority or for the use by any person of the facilities provided by the Authority or for the grant to any person of any licence, permit or certificate;
- (e) to prohibit, control or regulate-
 - (i) the use by any person of the services or facilities provided by the Authority; or
 - (ii) the presence of any person, vehicle or goods within, or on any premises occupied by, the Authority for the purposes of the Authority;
- (f) to do anything for the purpose of advancing the skills of persons employed by the Authority or the efficiency of the equipment of the Authority or of the manner in which that equipment is operated; to provide facilities for training, education and research; and to give assistance to other persons in the provision of such facilities;
- (g) to acquire or dispose of any right, title or interest in or over any land or other immovable property;
- (h) to provide houses, hostels and other similar accommodation for persons employed by the Authority;
- (i) to acquire by agreement, whether absolutely or for a term of years, the whole or any part of any undertaking of any other person being an undertaking or part of an undertaking, the activities of which either wholly or mainly fall within the scope of the functions of the Authority;
- (j) to undertake the management of a business of a carrier of passengers or goods by rail or otherwise carried on by any other person within or outside the Contracting States;

- (k) to enter into agreement with any person carrying on business as a carrier of passengers or goods within or outside the Contracting States, for the carriage of passengers or goods by or on behalf of the Authority and that other person under one contract or at a through charge or in the same vehicle or container, whether belonging to the Authority or such other person or any other person;
- (l) to act as an agent for any person engaged, whether within or outside the Contracting States, in the performance of services or the provision of facilities of a kind similar or complementary to those performed or provided by the Authority;
- (m) to give loans to persons employed by the Authority to assist them to acquire housing accommodation or to guarantee loans made to such persons for such purposes;
- (n) to develop forests and produce timber for the Authority's own purposes and requirements and to manufacture, turn to account, market and realize any timber not required for such purposes;
- (o) to give loans to, or guarantee repayment of loans made to, persons carrying on business as carriers of passengers or goods on such terms as the Authority may decide;
- (p) to finance, subscribe to or support any fund established for any charitable cause approved by the Authority;
- (q) to apply for, purchase or otherwise acquire any patent, concession and the like, conferring any right to use any invention capable of being used for any of the purposes of the Authority, and to use, grant licences for the use of, or otherwise turn to account, any rights so acquired;
- (r) to enter into agreement with any person —
 - (i) for the supply, construction, manufacture, maintenance or repair by that person of any property, movable or immovable, necessary or desirable for the purposes of the Authority;
 - (ii) for the performance or provision by that person of any of the services or the facilities which may be performed or provided by the Authority;
- (s) to enter into partnership or into any arrangement for sharing profits, union of interests, joint venture, reciprocal concession or co-operation with any person carrying on or engaged in, or about to carry on or engage in, any business or transaction which the Authority is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the Authority; and to take or otherwise acquire and hold shares or stocks in or securities of, and to subsidize, or otherwise assist, any such person, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with such shares or securities;

(t) to do all other acts and things which in the opinion of the Authority are necessary to facilitate the proper performance of its functions.

(3) The Authority may sell, let or otherwise dispose of, whether absolutely or for a term of years, any part of its undertakings or any property which in its opinion is not required for the performance of its functions under this Act, including, but without prejudice to the generality of this subsection, any part of its undertakings which is carried on outside the Contracting States and any property which is situated outside the Contracting States:

Provided that-

- (i) the Authority shall not so sell, let or otherwise dispose of any building or land placed at its disposal by the Government otherwise than with the consent of and under conditions agreed to by the Government;
- (ii) nothing in this subsection shall be construed as exempting the Authority from the provisions of any other written law imposing restrictions, limitations, obligations or conditions in relation to any disposition or alienation of any land, or an), right, title or interest in or over any land, or in relation to any rent which the Authority may recover as landlord.

(4) No railway undertaking of a major nature shall be constructed by the Authority unless, prior to such construction, a report on such proposed undertaking and, in particular, on the advantages and disadvantages of any alternative undertaking, has been made by the Board to the Council and has been approved by the Council.

(5) For the purposes of subsection (4), the expression "railway undertaking of a major nature" shall mean a new railway line constructed for the conveyance of passengers or goods for hire and reward, and shall not include lines or sidings constructed only its additional facilities to industrial or commercial premises or lines or sidings constructed for the purposes of operating the existing railway undertaking of the Authority.

(6) The powers conferred on the Authority under this section to construct or execute any works shall include power for the construction or execution of such works on land vested in the Authority or on land placed at its disposal by the Government for the purposes of the Authority; or in the case of land not so vested in, or placed at the disposal of, the Authority, only with the agreement of the owner of the land on which such works are to be constructed or executed; and where any land is required by the Authority for the purposes of the Authority, the Authority shall proceed in accordance with the provisions of section 24.

(7) Nothing in this section shall be construed as authorizing the Authority to act in contravention of the Agreement.

Authority not to be required to provide services at a loss

15. The Authority shall not be required by the Government to provide to the Government, or to any authority or person, transport services, either gratuitously or at a rate or charge which is less than that specified in the Tariff Book for the provision of such services or facilities by the Authority, unless the Government undertakes to make good the amount of the loss incurred by reason of the provision of such services or facilities.

PART V

BOARD OF DIRECTORS

Tenure of office of members

16. (1) A member of the Board shall, unless his appointment is sooner terminated by the appointing Government or he otherwise ceases to be a member, hold office for such period and upon such conditions as may be specified at the time of his appointment, and shall, on ceasing to be a member, be eligible for reappointment.

(2) Any member of the Board may at any time resign his office-

- (a) upon communication in writing to the appointing Government of his intention to resign and the acceptance thereof by the appointing Government; or
- (b) upon the expiry of the period specified in his notice of resignation as may be approved by the appointing Government.

Duty of member to disclose interest

17. If a member of the Board is directly or indirectly interested in any contract, proposed contract or other matter and is present at a meeting of the Board Or of any committee thereof at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof disclose such interest, and shall not, unless the Board or the committee otherwise directs, take part in the consideration or discussion of, or vote on, any question with respect to that contract, proposed contract or other matter. A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Procedure and meetings of Board

18. (1) Subject to the provisions of this section, the Board may determine its own procedure and may make standing orders with respect to the holding of meetings, the notices to be given of such meetings, the proceedings thereat, the keeping of minutes of such proceedings and the custody and production for inspection of such minutes.

(2) The quorum of the Board shall be one-half of the total number of members of the Board in office, which shall include at least two members from each Contracting State.

(3) The Board may act notwithstanding any vacancy in its membership.

(4) The General Manager and the Deputy General Manager shall have the right to attend all meetings of the Board, and shall be entitled to address such meetings, but shall not vote on any matter under discussion:

Provided that the chairman of any meeting of the Board may, for good cause, request the General Manager or the Deputy Manager to withdraw from such meeting.

(5) A decision of the Board shall be by a majority of the votes of the members present and voting, which shall include the affirmative vote of at least one member from each Contracting State.

(6) The Board shall from time to time meet for the transaction of business at such time and place as it may decide, but not less than four times in any financial year.

(7) The chairman may at any time call a special meeting of the Board, and shall call such a meeting if so requested by not less than one-half of the total number of members of the Board in office:

Provided that ten days' notice of a special meeting shall be given unless the chairman considers that the matter for consideration is so urgent as to require a shorter period of notice.

(8) The chairman shall preside at every meeting of the Board, but in the absence of the chairman from any meeting, the members present shall appoint one of their number to preside over that meeting. The chairman or the member presiding at any meeting shall have a deliberative vote, and, in the event of an equality of votes, a casting vote.

(9) Notwithstanding the foregoing provisions of this section, a decision may be made by the Board without a meeting by circulation of the relevant papers among the members of the Board, and the expression of the views of the majority thereof in writing:

Provided that-

- (i) no such decision shall be valid unless supported by the vote of at least one member from each Contracting State;
- (ii) any member shall be entitled to require that any such decision be deferred and the subject-matter be considered at a meeting of the Board.

19. The Authority shall pay to the members of the Board such remuneration, fees or allowances for expenses as the Council may determine from time to time:

Rumera-
tion of
members
of Board

Provided that no remuneration, fees or allowances, except such allowances for expenses as may be expressly authorized by the Council, shall be paid to any member of the Board who is a public officer.

20. Any act or proceeding of the Board shall not be rendered invalid by reason only of any vacancy in the membership of the Board, or of any defect in the appointment of any member thereof, or by reason that some person who was not entitled to do so took part in such act or proceeding.

Validity of
Board's
acts or
proceedings

21. The Board shall not exercise any of its powers under this Act in respect of any of the following matters without the prior consent and approval of the Council:

Matters
requiring
consent
and
approval
of
Council

- (a) any important question of railway policy, including any question of an international character involving agreement with, or the interest of, any country other than the Constructing States;

- (b) any major change in the tariff of rates, fares and other charges made for the services performed, and the facilities provided, by the Authority;
- (c) any major revision of salaries, wages or other terms and conditions of service of employees;
- (d) the raising of new capital;
- (e) the approval of any capital work for the purposes of the Authority, of which the estimated cost exceeds five million shillings, or such higher sum as the Council may determine.

Corn-
mittees of
Board

22.-(1) The Board may appoint committees of members of the Board to which it may delegate any of its functions under this Act other than-

- (a) powers delegated to the General Manager in terms of section 23;
- (b) powers to change the tariff of rates, fares and other charges, to make or amend any regulations and to approve the annual budget; and
- (c) powers which the Board may not exercise without the prior consent and approval of the Council.

(2) Subject to the provisions of subsection (1), the Board shall have power to establish *ad hoc* committees for the purposes of the Authority, and to appoint persons who are not members of the Board to such committees.

PART VI

THE GENERAL MANAGER

Duties of
General
Manager

23.-(1) The General Manager shall be the chief executive officer of the Authority.

(2) Subject to the approval of the Council, the Board shall delegate to the General Manager such of the functions of the Authority under this Act as are necessary to enable him to transact all the day-to-day business of the Authority and in particular, but without prejudice to the generality of the foregoing, shall delegate to him the power to exercise supervision and control over the acts and proceedings of all employees in matters of operation and administration of the railway and in matters concerning the accounts and other financial records of the Authority and, subject to any specific or general restrictions that may be imposed by the Board, the power to dispose of all questions relating to the service of the employees and their pay, privileges and allowances.

(3) In the exercise of the powers delegated to him by the Board, the General Manager shall comply with any direction of policy or of a general nature given to him by the Board and shall not, without the prior approval of the Board, whether given generally or specifically, depart or permit any departure from the approved estimates of expenditure or from the approved establishment of the Authority or the normal procedures for dealing with any particular matter.

PART VII

ACQUISITION OF LAND AND RAILWAY UNDER CONSTRUCTION

24.-(1) Where any piece or parcel of land is required for the purposes of the Authority and the Authority is unable to acquire such land by agreement, the Authority may make representations to the Government and the Government may, if it consider it proper to do so, acquire such land and place the same at the disposal of the Authority.

Acquisitions of land for purpose of Authority

(2) Any compensation which becomes payable to the occupier of any land acquired pursuant to subsection (1) shall be payable by the Authority in such manner and by such installments as the Government may direct.

25.-(1) Any authorized employee may, for the purposes of the Authority, enter upon-

Power under law to survey, etc

- (a) any land and survey such land or any portion thereof;
- (b) any land contiguous to any premises occupied by the Authority 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 on 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 the Authority of telegraphic or telephonic means of communication:

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

(2) Where any materials or timber are taken away in, or any damage is caused by reason of, the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to adequate compensation therefor from the Authority.

26.-(1) Any authorized employee may, for the purpose of preventing the occurrence of any accident, preserving the safe operation of any transport services provided by the Authority or repairing any accidents, damage caused by any accident, enter up on any land and-

Power to enter 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 any danger to any such transport services; 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 therefore from the Authority:

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 services.

(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 services provided by the Authority, the Authority may, unless such person has previously obtained the approval of the General Manager to the erection of such building or has modified it to the satisfaction of the General Manager, 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 the Authority of the cost incurred in resiting or replacing any signaling equipment or otherwise necessary to prevent such obstruction or danger and the court, in its discretion, may grant such order and may make such order as to the payment of compensation and costs as it deems fit.

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

27. (1) Any authorized employee, may for the purposes of the Authority, enter upon any land and alter the position of any pipe for the supply of gas, oil, water or compressed air, or the position of any electric, telephone or telegraphic wire or the position of any drain.

(2) Where the Authority exercises any power under subsection (1), it shall give reasonable notice of its intention so to do to the authority or person having control of the pipe, wire or drain and-

- (a) such authority or person may authorize a representative to superintend such work and may require the Authority to execute such work to the satisfaction of such representative; and
- (b) the Authority shall make arrangements for the maintenance of the supply of gas, oil, water, compressed air or electricity, of 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 the Authority.

Power to take water

28. The Authority may, for the purposes of the Authority, take any water from any natural watercourse, subject to the provisions of any written law regulating the use of water.

29.-(1) Subject to the provisions of subsection (2), where, in the exercise of its powers under this Act, the Authority constructs a railway then, during the construction of the railway or as soon as practicable thereafter, it shall 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:

- (a) such crossings, bridges or other works as, in the opinion of the Authority, 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 the Authority, 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 a 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 amount 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 constructed under this section and such road or watercourse is afterwards diverted by some person other than the Authority, then the Authority shall not be required to construct other accommodation works for the crossing of such road or watercourse.

30. 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 Authority under section 29; or
- (b) any authority proposes to construct a public road or any other works across a railway,

then such owner, occupier or authority, as the case may be, may require the Authority to construct such accommodation works-

- (i) as may be agreed between the General Manager and the owner, occupier or authority; and
- (ii) if no such agreement is reached, as may be determined by the Board,

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

Construction
of railway
crossing
public road

31.-(1) Where, in the exercise of powers under this Act, the Authority proposes to construct a railway across a public road, the Minister may, subject to the provisions of subsection (3), require the Authority to construct the railway in such a 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 the Authority 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 Authority-

(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 the Authority shall comply with such requirements.

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

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

Use of
railway
under
construction

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

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

(2) The Council 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 conveyed on any railway which is under construction by the Authority or which has not been declared open, the Board may-

(a) fix rates, fares, dues and other charges in respect of any services rendered by the Authority 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 XII and XIII shall not apply to a railway under construction.

PART VIII

FINANCIAL PROVISIONS

33.-(1) It shall be the duty of the Authority to conduct its business according to commercial principles and to perform its functions in such a manner to ensure that, taking one year with another, its revenue is not less than sufficient to meet its outgoings which are properly chargeable to revenue account including proper allocations to the general reserve and provision in respect of depreciation of capital assets, pension liabilities and interest and other provision for the repayment of loans and further to ensure that, taking one year with another, its net operating income is not less than sufficient to secure an annual return on the value of the net fixed assets in operation by the Authority of such a percentage as the Council may from time to time direct.

Principles
of
operation

(2) For the purposes of subsection (1)-

- (a) "net operating income" shall be determined by subtracting from gross operating revenue all operating and administrative expenses including taxes (if any) and adequate provision for maintenance and depreciation; and
- (b) "value of the net fixed assets in operation" shall be the value of such assets less the amount of accumulated depreciation shown in the statement of accounts of the Authority:

Provided that, if the amounts shown in such statements of accounts do not reflect a true measure of value of the assets concerned because of currency devaluations or revaluations, changes in prices or similar factors, the value of fixed assets shall be adjusted adequately to reflect such currency devaluations or revaluations, changes in prices or similar factors.

(3) It shall be the duty of the Authority, in performing its obligations under this section, to have regard to its revenues in the territories of the Contracting States as a whole and not to its revenues in any particular Contracting State or area within the territory of any Contracting State.

Establishment of general reserve fund

34.-(1) The Authority shall establish and maintain a general reserve fund, one of the purposes of which shall be to avoid frequent fluctuations in the rates, fares or other charges made by the Authority.

(2) The management of the general reserve fund, the sum to be carried to the credit thereof, the charges to be made against it and any other application of the general reserve fund shall be determined by the Authority in accordance with the provisions of this Act.

Borrowing powers of Authority

35.-(1) Subject to the provisions of subsections (2) and (3), the Authority may borrow money for all or any of the following purposes:

- (a) to meet the cost of permanent work properly chargeable to capital;
- (b) the purchase of capital equipment;
- (c) the provision of working capital;
- (d) the repayment of loans;
- (e) the purchase, otherwise than merely by way of investment, of any securities or share holding of any body corporate which is carrying on or about to carry on, or which directly or indirectly controls another body corporate which is carrying on or about to carry on, any such activities as are specified in section 14;
- (f) the provision of any money, not being money properly chargeable to revenue, which is required for lending to, or to be paid under any guarantee given for the benefit of, any such body corporate as is mentioned in paragraph (e) or any other person who is carrying on or about to carry on any such activities as are specified in section 14; and
- (g) any other purpose for which capital expenditure may be properly incurred.

(2) The Authority may borrow by way of overdraft or otherwise, such moneys as may be required in the ordinary course of business for the purpose of temporary accommodation, and the interest and charges in respect of such borrowing shall be dealt with as a part of the working expenses of the Authority.

(3) The Authority may borrow from sources other than Government long term funds:

Provided that the Authority first obtains the approval of the Council before it borrows in any one financial year an amount in excess of five million shillings.

Investment of money not immediately required

36. Any moneys of the Authority which are not immediately required for the purposes of the Authority may be invested by the Authority in such manner as the Board may consider proper.

37.-(1) The Board shall, not less than one month before the beginning of any financial year, cause to be prepared and submitted to the Council for its approval and in such detail as the Council may require, an annual budget of the amounts expected to be received and disbursed by the Authority during that financial year.

Preparation
and
approval
of budget

(2) If in any financial year the Authority requires to make any disbursement on any item not provided for, or disbursement of an amount in excess of the amount provided for any item in the annual budget for that year, the Board shall submit to the Council for its approval a supplementary budget detailing such disbursement.

(3) Where the Council has approved any annual budget or supplementary budget, the budget as approved shall be binding on the Authority, and, subject to the provisions of subsection (4), the Authority shall confine its disbursement to the items and the amounts approved by the Council.

(4) The Board may, Subject to submitting a supplementary budget to the Council for its approval during the next meeting of the Council after the preparation of such budget, and subject to satisfactory arrangements being made for the funds required by reappropriation from funds allocated for the items in the approved budget-

- (a) authorize expenditure on any item to an excess of twenty-five per centum or one million shillings, whichever is the less, or such higher sum as the Council may determine from time to time, over the cost entered in the approved budget for that item;
- (b) authorize expenditure on any item not provided for in the approved budget, subject to the amount not exceeding one million shillings or such higher sum as the Council may determine from time to time.

38. The receipts of the Authority on revenue account in any financial year shall be applied in defraying all expenses Properly chargeable against revenue which shall *inter alia* include sums required for-

Allocation
of revenue
receipts

- (a) all working expenses of the Authority;
- (b) paying pensions or other terminal benefits to or in respect of persons who are or have been in the employment of the Authority;
- (c) making appropriate and adequate provision for maintenance, renewals, depreciation, appropriations to the general reserve fund under section 34 and appropriations to improvement or betterment accounts; and
- (d) a sinking fund, paying interest and other financial charges.

PART IX

ACCOUNTS AND REPORTS

Accounts
and
auditors

39.-(1) The Board shall cause to be kept proper books of account and other books and records in relation to all undertakings, operations, works and property of the Authority and, in addition, such particular accounts and records in respect of all or any of such undertakings, operations, works and property as the Council may direct.

(2) The Board shall cause to be prepared in respect of such financial year a statement of accounts showing in all necessary detail the assets and liabilities and the revenue and expenditure of the Authority.

(3) The accounts of the Authority shall be audited annually by independent auditors appointed from time to time by the Board.

(4) The auditors shall make a report to the Board on the accounts examined by them and on the statements of accounts prepared for the financial year to which they relate, and such report shall state-

- (a) whether the auditors have obtained all the information and explanations which they have required; and
- (b) whether in the opinion of the auditors the balance sheet contained in the statements of accounts is properly drawn up so as to exhibit a true and correct view of the state of the Authority's affairs according to the information and explanations given to them and as shown by the books of the Authority.

(5) The auditors shall have a right of access at all times to the books, accounts, vouchers and other related documents of the Authority and shall be entitled to require from the members of the Board and from any person employed by the Authority such information and explanations as may be necessary for the performance of their duties under this section.

(6) The auditors shall be entitled to make, in addition to making a report to the Board, any statement or explanation to the Council with respect to the accounts of the Authority as they may consider necessary or desirable.

...

Annual
report

40. The Board shall, within six months after the end of each financial year, prepare a report upon the operations of the Authority during that year and shall transmit such report to the Council which shall cause the same to be presented to the National Assembly together with the statement of accounts and report of the auditors referred to in subsection (2), (4) and (6) of section 39.

PART X

RESPONSIBILITY OF AUTHORITY AS A CARRIER AND WAREHOUSE MAN

41.-(1) The Authority shall not be liable for the loss of life of, or personal injury to, any passenger except where the loss of life or personal injury is caused by the want of reasonable care, diligence or skill on the part of the Authority or of any employee:

Liability for loss of life etc., of passengers

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

(2) The Authority 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 a train or vehicle other than a part normally provided for the use of passengers during travelling;
- (b) who, not being an 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 is being carried by any transport service other than one provided by the Authority or under the control of the Authority,

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.

42. The Authority shall not be liable for any loss arising from the delay to any passenger caused-

No liability for delay to passengers

- (a) by the failure of any train or vehicle to start on or complete any journey; or
- (b) by the late starting or late arrival of any train or vehicle, from whatever cause arising.

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

Liability for loss of etc., of goods in transit

- (a) act of God;
- (b) act of war or an act of an enemy of the United Republic;
- (c) seizure under legal process;
- (d) act or order of the Government of a Contracting State;
- (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 due to failure of -the Authority or of any employee to use reasonable foresight and care in the carriage of goods, the Authority shall not be relieved from liability for such loss, misdelivery or damage;
- (ii) the Authority 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 59 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 Authority 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 Authority has been given;
 - C. which at the time such loss, misdelivery or damage occurred are being carried by any transport service other than one provided by the Authority or under the control of the Authority;
 - D. where there is a loss of a particular market whether held daily or at intervals; or
 - E. where such loss, misdelivery or damage arises from improper or insufficient packing or from riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general.

Liability
for delay
etc., of
goods

44. The Authority shall not be liable for any loss arising from delay to, detention of or deviation in the carriage of goods unless such delay, detention or deviation is caused by the want of reasonable foresight and care on the part of the Authority or of any employee:

Provided that the Authority shall not in any circumstances be liable for any loss arising from delay to, detention of or deviation in the carriage of goods-

- (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 Authority has been given;
- (iii) which at the time such delay, detention or deviation occurred are being carried by any transport service other than one provided by the Authority or under the control of the Authority;
- (iv) where there is a loss of a particular market whether held daily or at intervals; or
- (v) where such delay, detention or deviation arises from insufficient packing or incorrect address or from riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general.

45.-(1) The liability of the Authority 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 Authority 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 Authority shall not in any case exceed such declared value.

Limitation of liability for animals

(2) In every proceeding against the Authority 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.

46.-(1) The liability of the Authority in respect of any article specified in the Second Schedule, and contained in any parcel or package, shall not, in any circumstances, exceed one thousand shillings unless, at the time of acceptance of such parcel or package by the Authority for carriage, the consignor or his agent declared that the value of such article exceeded one thousand shillings 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 Authority 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 the carriage of any parcel or package containing any article, the value of which has been declared to be in excess of one thousand shillings, that the contents of such parcel or package may be inspected by an authorized employee at the time of such declaration.

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

(4) The Board may by regulation amend the provisions of the Second Schedule or vary the amount of the maximum liability of the Authority as specified in this section.

47. The liability of the Authority in respect of any goods carried by the Authority in relation to which an account false in any material particular has been given under subsection (1) of section 59 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

48.-(1) The liability of the Authority under this Act for the carriage of goods by the Authority shall not be limited in any manner otherwise than by contract made in accordance with provisions of this section.

Limitation of liability by contract

(2) A contract purporting to limit the liability of the Authority under this Act for the carriage of goods by the Authority 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 Authority.

Liability
for loss,
etc., of
goods

49.-(1) Subject to the provisions of this Act, the Authority shall not be liable for the loss, misdelivery or detention of, or damage to, goods-

- (a) delivered to, or in the custody of, the Authority otherwise than for the purpose of carriage;
- (b) accepted by the Authority 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 the want of reasonable foresight and care on the part of the Authority or of any employee:

Provided that the Authority 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 United Republic;
- (iii) seizure under legal process;
- (iv) act or order of the Government of a Contracting State;
- (v) act or omission of the consignor, consignee or depositor, of the servant or agent of any such person;
- (vi) fire, flood, 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 the Authority for carriage otherwise than while the goods are in transit, the limitation of the liability of the Authority contained in sections 45, 46 and 47 or under any contract under section 48 shall apply.

(3) Where such loss, misdelivery, detention or damage occurs in relation to goods accepted by the Authority for warehousing, the limitation of the liability of the Authority contained in section 47 shall apply.

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

50.-(1) The liability of the Authority 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 thousand shillings unless at the time of the deposit the person depositing the 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 Authority shall not in any case exceed such declared value.

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

PART XI

OPERATIONS OF THE AUTHORITY

51.-(1) The Authority may, subject to the provisions of this Act-

(a) determine the conditions upon which passengers and luggage shall be carried by the Authority 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;

Authority
may
conditions
for charge
of passengers
and luggage

(b) determine the fares and other charges for the carriage of passengers and luggage by the Authority 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 of a specified amount of baggage by a passenger free of charge, and different amounts may be determined for passengers travelling by different classes;

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

(2) Notwithstanding the provisions of subsection (1), the Authority 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 and luggage by the Authority 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.

52. Subject to the provisions of this Act, any person who has tendered to an authorized 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 Authority in accordance with the conditions subject to which such ticket is issued:

General
right of
person to be
carried as
passengers

Provided that if, in the opinion of an authorized employee, a person who applies for a ticket, or a person in, possession of a ticket or free pass, appears-

(i) to be suffering from any mental disorder;

(ii) to be suffering from any contagious or infectious disease; or

(iii) to be under the influence of alcohol or dangerous drugs,

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.

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

53.-(1) Every ticket and free pass shall be issued by the Authority subject to the provisions of this Act, and in addition to any other condition, to the condition that-

- (a) there is room available in the train or vehicle of the class for which the ticket or free pass is issued;
 - (b) an authorized 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 so to do, present his ticket or free pass for examination by an authorized 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-
- (a) may obtain a refund of the fare which he has paid on returning his ticket to an authorized employee as soon as practicable; or
 - (b) may elect, subject to there being room available, to travel in a lower class and shall, upon drawing as soon as practicable the attention of an authorized 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, an authorized employee, 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 traveled:

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

Person without valid ticket, etc., may be removed from train, etc.

54. No person shall be upon any train or vehicle of the Authority for the purpose of travelling therein as a passenger unless he is in possession of a valid ticket or free pass; and any person found on any such train or vehicle without a valid ticket or free pass may, without prejudice to any other action which may be taken against him, be required by any employee to leave the train or vehicle and, if he does not do so, may be removed therefrom with such force as may be reasonable in the circumstances.

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

55.-(1) Any person who-

- (a) travels on any train or vehicle of the Authority 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 authorized 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;
- (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 authorized 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 in a train or vehicle beyond the place authorized by his ticket or free pass,

shall be liable to pay on demand by an authorized 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 authorized employee, any person refuses to pay the fare and excess charge for which he is liable under this section, any authorized employee or any police officer may, if there is reasonable ground to believe that there would be difficulty or delay in bringing such person before a court by any other means, arrest and detain that person without a warrant and bring him, as soon as practicable, before a court having jurisdiction to deal with him in accordance with the provisions of this Act.

56.-(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 authorized employee for carriage by the Authority 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 the Authority subject to the provisions of this Act and, in addition to any other condition, to the condition that-

- (a) unless the luggage is delivered to an employee 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.

57.-(1) The Authority may, subject to the provisions of this Act-

- (a) determine the conditions upon which goods shall be carried or warehoused by the Authority 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;

Authority
may
determine
conditions
for carriage
of goods,
etc

- (b) determine the rates and other charges for the carriage or warehousing of goods and for any other service or facility provided by the Authority; 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.

(2) Notwithstanding the provisions of subsection (1), the Authority may, in relation to the special circumstances of any particular case, determine conditions, rates and other charges applicable to such case for the carriage or warehousing of goods by the Authority 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

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

Provided that if, in the opinion of an authorized 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 63 applies;
- (iii) any goods tendered for carriage exceed the maximum weight or dimension 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 by the Authority, 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

59.-(1) The consignor of, or the person tendering any goods to the Authority for carriage or warehousing and, on request by an authorized employee, the consignee of, or person receiving, any goods which have been carried or warehoused by the Authority, shall deliver to an authorized employee, an account in writing signed by such consignor, person or consignee, as the case may be, containing such a 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 by the Authority.

(2) Any authorized 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 authorized employee may-

- (a) in respect of goods which are tendered to the Authority 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 by the Authority, refuse to deliver such goods unless in respect thereof a rate or charge not exceeding such highest rate charge as referred to in paragraph (a) is paid.

(4) If, in respect of goods which have been carried or warehoused by the Authority, 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 authorized 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.

60.-(1) Where any person fails to pay on demand made by an authorized employee any fare, rate or charge due from him as a passenger or in respect of any goods, the Authority 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 the authorized employee, insufficient to pay for such fare, rate or charge due or if such goods have been removed from the possession of the Authority, any other goods of such person which may be in, or may thereafter come into, the possession of the Authority.

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

(2) Where any goods have been detained under subsection (1), the Authority 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 at once;
- (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 United Republic.

(3) The Authority 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 General Manager to be entitled thereto:

Provided that if such person fails, after notice so to do, to remove within a reasonable time the goods if any, remaining unsold, the Authority 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 Authority to recover any such fare, rate or charge, or any part thereof, by any other lawful means.

Unclaimed
goods in
Possession of
Authority

61.-(1) Where any goods in the possession of the Authority are not claimed by the owner or any other person appearing to the Authority to be entitled thereto, the Authority 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 in the possession of the Authority 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 Authority may, within a reasonable time not being 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 United Republic.

Indemnity
where
goods
claimed
by two
persons, etc.

62. Where-

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

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

Dangerous
or offensive
goods, etc.

63.-(1) No person shall take with him upon any train or vehicle of the Authority or tender to the Authority 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 to the Authority for carriage or warehousing, to the employee to whom such goods are tendered

(2) An authorized 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 Authority;
- (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 reasonably direct.

(3) Where any authorized 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 or vehicle of, or from premises occupied by, the Authority.

(4) Goods to which this section applies are any dangerous or offensive goods and 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 United 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 United Republic, or by any police officer, in the course of his duty.

64. Subject to the provisions of this Act, the Authority shall have power to fix and alter from time to time rates, fares and other charges for the services and facilities provided by the Authority.

Power of Authority to fix rates, fares and other charges

65.-(1) Whenever the Authority considers that the maintenance of any structure of rates, fares and other charges in respect of the services provided by the Authority 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, the Authority may, subject to the provisions of section 21, make such alterations in the said rates, fares and other charges as may be necessary to produce in future years an appropriate increase or decrease, as the case may require, in the revenue of the Authority, and, in considering any proposals for such alterations, the Authority 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 the Authority proposes to alter any rates, fares or other charges under section 64 the Authority shall-

- (a) give reasonable notice to the Council and 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 General Manager.

(3) Every objection to a proposed alteration of rates, fares or other charges of which notice is given by the Authority under subsection (2), shall be submitted to, and decided upon, by the Board, and any person who is aggrieved by the decision of the Board may appeal to the Council, whose decision on the matter shall be final.

Authority to prepare Tariff Book, etc.

66. (1) The Authority shall prepare and publish in such manner as it may deem 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 Authority;
- (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-

- (a) a copy of the Tariff Book containing all amendments for the time being in force;
- (b) a list specifying the fares for the carriage of passengers by the Authority 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 the Authority.

Authority shall determine maximum load, etc.

67.-(1) The Authority shall determine--

- (a) the maximum load for every wagon of the Authority and no wagon shall, except with the permission of the General Manager, 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 Authority.

(2) The General Manager shall cause the maximum load determined under subsection (1) in respect of every wagon to be marked in a conspicuous manner on each wagon.

PART XII

INSPECTORS OF RAILWAYS, OPENING NEW RAILWAYS AND PUTTING INTO SERVICE NEW TYPES OF ROLLING STOCK

Definition

68. In this Part and Parts XIII and XIV, unless the context otherwise requires-

"Inspector of Railways" means a public officer appointed as such under the provisions of section 69.

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

Appoint-
ment and
duties of
Inspectors
of
Railways

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

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

- (a) to inspect the railway or rolling stock with a view to determining whether they are fit for the public carriage of passengers or goods, and to report thereon to the Minister;
- (b) to inspect the railway or rolling stock used thereon for the purpose of ascertaining whether the provisions of any written law or of any regulations made under this Act relating to the safety and protection of passengers or goods carried by rail are being complied with by the Authority;
- (c) to conduct inquiries, in accordance with the provisions of this Act, into the cause of any accident on the railway;
- (d) to perform such other functions as are conferred or imposed upon him under the provisions of this Act or any other written law; and
- (e) to perform any other functions as the Minister may direct in relation to the safety and protection of passengers or goods carried by rail.

70.-(1) Every Inspector of Railways shall, for the purpose of performing his duties under the provisions of this Act, have power

Powers of
Inspectors
of
at Railways

- (a) to enter, inspect and examine any premises of the Authority at all reasonable times by day or night;
- (b) to interrogate and take written statements from any employee;
- (c) to examine and conduct 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 the Authority and its lawyers, which appears to him to be necessary to, inspect;
- (e) by notice in writing under his hand addressed to the General Manager, to require the attendance before him of any employee and to require such answers or returns to such enquiries conducted by him as he may deem fit to make from such employee.

(2) No action or other legal proceeding 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.

71. It shall be the duty of the Authority 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 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 the provisions of this Act.

Means of
entry, etc.
and infor-
mation to be
provide to
Inspectors of
Railways

Putting into service new types of rolling stock or opening new railway intended opening of railway or use of new type of rolling stock

72. Subject to the provisions of sections 73, 74 and 75 the Authority may open a new railway or put into service a new type of rolling stock.

73.-(1) Subject to the provisions of subsection (2), the Authority shall, not less than one month before it intends to open a railway for the public carriage of passengers or goods by rail 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

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

Procedure for approval

75.-(1) The approval in writing required under the provisions of section 73 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 prescribed by the Authority 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 prescribed by the Authority;
- (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 Authority; 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 Authority to postpone the opening of the railway or the putting into service of the new type of rolling stock and the Authority shall give effect to every such direction.

(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 74 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 74 is given subject to conditions, the Authority 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 authorized in that behalf by the Minister.

76.-(1) The provisions of section 73, 74 and 75 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 and have been inspected prior to such construction before the plans and designs are approved by the Authority.

Alteration
of railways

(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.

77.-(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 Authority 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.

Special
provision

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

78.(1) Where, after inspecting a railway used for the 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

Power to
close railway
or to discon-
tinue use of
rolling stock

reasons therefor, to the Minister and the Minister may thereupon direct the Authority 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.

79.-(1) When a railway has been closed under the provisions of section 78, 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 78 that the use of rolling stock specified in the direction be discontinued, the Authority 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.

Delegation of
Minister's
powers

80.-(1) The Minister may, by order in the *Gazette*, delegate to an Inspector of Railways the exercise of any of his powers or the performance of any of his duties under the provisions of this Part.

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

ACCIDENTS

Duty to
report
accidents

81. When an accident occurs in the course of any operations carried on by the Authority which-

- (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 Authority,

the General Manager 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, the General Manager shall cause the matter to be reported to the police station nearest to the scene of the accident.

82.-(1) The Minister may order an inquiry to be held into any accident referred to in section 81 by an Inspector of Railways or by into any other person and for that purpose he may prescribe the procedure for the conduct of such inquiry, specify the person by whom it shall be conducted, the remuneration to be paid to such person and to witnesses and the place where, and the time at which, it shall be held.

Inquires
into accidents

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

(3) The Inspector of Railways or the person conducting 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 order in the *Gazette* prescribe.

(4) The Inspector of Railway or the person by whom an inquiry is conducted under subsection (1) shall prepare a report on the accident, setting out inter alia the probable cause of the accident, the person, 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.

83. The General Manager shall send to the Minister a return of all accidents occurring on the railway in such form and such manner and at such intervals as the Minister may direct.

Submission of
return of
accidents

PART XIV

OFFENCES AND PENALTIES

84. 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, abets, 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

Other serious
offences

85. Any person who-

- (a) wilfully or negligently puts, places, casts or throws upon or across any railway line any wood, stone or other matter or thing or wilfully or negligently takes up, removes or displaces any rail, sleeper or other matter or thing belonging to the Authority, or wilfully or negligently takes up, removes or displaces any or other machinery belonging to the Authority, or wilfully or negligently makes or shows, hides or removes any signal or light upon or near to any railway line, or wilfully or negligently does or causes to be done any other thing with intent to obstruct, upset, 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) wilfully or negligently 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) wilfully or negligently 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 to or appertaining to the railway; or
- (d) wilfully or negligently sets fire to any matter or thing being in or against or under any building or train or vehicle belonging to the Authority,

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

Minor
offences

86. Any person who-

- (a) not being specifically authorized in that behalf and not being an employee, agent or passenger of the Authority-
 - (i) is found during the hours of darkness on any premises occupied by the Authority; or
 - (ii) is found in any area designated by the Authority as dangerous or restricted by the erection of notice-boards to that effect; or
 - (iii) refuses to leave premises occupied by the Authority or any train or vehicle of the Authority after being lawfully warned to do so by any employee or police officer-,
- (b) being on any premises occupied by the Authority or upon any train or vehicle of the Authority-
 - (i) when called upon by an employee or a police officer refuses to give his name and address, or gives a false name or address for the purpose of avoiding 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; or
- (vi) save with the permission of an authorized 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 word, matter, representation or character upon any premises occupied by the Authority or upon any train or vehicle of the Authority; or
- (d) defaces the writing on any board or any notice authorized to be maintained upon any premises occupied by the Authority or upon any train or vehicle of the Authority; or
- (e) damages or without lawful excuse interferes with any property of the Authority; or
- (f) without lawful excuse, enters or leaves any train or vehicle of the Authority while it is in motion or elsewhere than at the place appointed by the Authority 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 and 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 the 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 the Authority; or
- (j) fails to deliver at the earliest possible opportunity to any authorized 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 Authority; or
- (k) wilfully obstructs or impedes an employee in the performance of his duties; or
- (l) gives or offers to any employee any money or anything of value for the purpose of avoiding payment of any sum due to the Authority; or
- (m) unlawfully removes any property of or in use by the Authority, or permits any property of or in use by the Authority to be unlawfully in his possession or in 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 Authority, 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, receives from any passenger, or from any other person delivering goods to the Authority for carriage or warehousing, or from any other person making use of the facilities provided by the Authority, any money and fails within a reasonable time not exceeding half an hour to issue a ticket or other receipt in respect of such money; or
- (q) without the permission of an authorized employee, travels in or upon any part of a train or vehicle of the Authority other than the part ordinarily provided for passengers during travel; or
- (r) wilfully obstructs any person acting under the instructions of the Authority 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 26 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 thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Travelling
without
valid
ticket, etc.

87.-(1) Any person who-

- (a) travels on a train or vehicle of the Authority 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 the Authority beyond that distance with intent to avoid payment of the fare for the additional distance; or
- (c) travels on a train or vehicle of the Authority 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 55; or
- (e) travels on a train or vehicle of the Authority with a ticket or free pass, or any portion thereof, purchased or obtained by him from any person other than an authorized employee,

shall be guilty of an offence, and shall be liable upon conviction to a fine not exceeding two thousand shillings 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 55 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 authorized employee.

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

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

88. Any person who, being a passenger on any train or vehicle of the Authority-

Offences by
passengers

- (a) enters any part thereof reserved for the use of another person, or already containing the maximum number of persons authorized for that part, and refuses to leave that part after being required to do so by an authorized employee; or
- (b) resists or obstructs the lawful entry of any person into any part thereof not already containing the maximum number of persons authorized for that part; or
- (c) refuses or fails to obey any lawful direction of an authorized employee relating to the requirements of section 53; 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; 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 thousand shillings or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.

89. Any person who-

Offences
relating to
tickets

- (a) not being an authorized employee or agent, 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; or
- (b) purchases or obtains any ticket or free pass, or any portion thereof, from any person other than an authorized employee or agent; 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 thousand shillings or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.

90. Any person who-

Forgeries,
etc., of
tickets

- (a) obtains by false pretences or other fraudulent means any ticket or free pass issued by the Authority; 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 ten thousand shillings 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 55.

False
returns

91. 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 authorized to be made for the purposes of the Authority under this Act shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.

Unlawfully
transporting
dangerous
goods

92.-(1) Any Person who, in contravention of the provisions of section 63-

- (a) takes with him any goods to which that section applies upon any train or vehicle of the Authority; or
- (b) delivers any such goods to the Authority for carriage or warehousing,

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand shillings 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 the train or vehicle or delivered to the Authority 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 it and, in default of such payment, may impose a further term of imprisonment not exceeding six months.

Employee
demanding
improper
amount

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

Causing
dangerous
situation
by neglect
of duty

94. Any employee 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
- (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 or to a collision; or
- (ii) in which the safety of persons travelling by or working on the railway is or might be, on the happening of a reasonably foreseeable contingency, endangered,

shall be guilty of an offence and shall be liable upon conviction, in the case of a first offence, to a fine not exceeding five thousand shillings and, in the case of a second or subsequent offence, to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

95. An employee who while-

Drunkness
on duty

- (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 repairs of any train or vehicle,

is found having consumed alcohol in such quantity that the proportion thereof in his blood, as ascertained from a laboratory test for which he subsequently provides a specimen under section 97, exceeds the prescribed limit at the time he provides the specimen, shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

96.-(1) Subject to the provisions of subsection (2), an employee may be required to provide a specimen of breath for a breath test by an authorized officer, if the authorized officer has reasonable cause to suspect him of having alcohol in his blood.'

Breath test

(2) An employee 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 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 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 one thousand shillings.

Laboratory
test

97.-(1) Where an employee refuses to provide a specimen of breath for a breath test under the provisions of section 96, the authorized officer may require the employee to submit himself to a laboratory test as soon as practicable thereafter.

(2), If it appears to an authorized officer in consequence of a breath test carried out by him under the provisions of section 96 that the device by means of which the test is carried out indicates that the proportion of alcohol in the employee's blood exceeds the prescribed limit, the authorized officer may request the employee to submit himself to a laboratory test as soon as possible thereafter.

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

(4) Any employee who refuses to submit himself to a laboratory test when required by an authorized officer to do so under subsection (1) or (2), or who fails to provide a specimen when requested 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 twenty thousand shillings or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(5) *No* employee shall be treated for the purposes of subsection (4) as failing to provide a specimen unless-

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

(6) The first specimen of urine provided in pursuance of a request made under paragraph (b) of subsection (5) shall be disregarded for the purposes of section 95.

(7) An authorized officer on requiring an employee to submit himself for a laboratory test pursuant to subsection (2), or a medical practitioner on requesting him to provide a specimen pursuant to subsection (3), shall warn the 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 authorized officer or the medical practitioner, as the case may be, fails to do so, the court before which the employee is charged with an offence under section 95 may acquit or discharge him, as the case may be.

Miscellaneous
provisions

98. For the purposes of this section and section 95, 96 and 97-

- (a) unless the context otherwise requires-
"authorized officer" means a police officer, a medical practitioner, a station master, an Inspector of Railways or any other person authorized in writing by the General Manager to request an employee 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 an order 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 Practitioners and Dentists Ordinance;

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"prescribed limit" means 80 milligrammes of alcohol in 100 millilitres of blood or such other proportion as may be prescribed by regulations 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.

99.-(1) Where the safe operation of any transport service of the Authority will be endangered by the immediate arrest, with or without warrant, of any employee, the police officer whose duty it is to make such arrest shall—

Arrest of
employee

(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 least possible delay.

Power of
arrest,
remove and
place of trial

100.-(1) Any person who commits any offence mentioned in section 84, 85, 86, 87, 88, 90 or 93 may be arrested without warrant by any authorized employee or police officer and shall thereupon, with the least possible delay, be taken before a magistrate having jurisdiction to try him or commit him for 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 authorized employee or police officer if-

- (a) there is reason to believe that such person will abscond; or
- (b) he refuses on demand to give his name and address; or
- (c) there is reason to believe that the name or address given by him is false,

and shall thereupon, with the least possible delay, be taken before a magistrate having jurisdiction to try him or 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 any of the offences set out in section 86, 87, 88 or 92, may be required by any authorized employee or police officer to leave the premises occupied by the Authority 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) Any person who, under the provisions of this section, is arrested or required to leave any premises occupied by the Authority or any train or vehicle thereof, shall not be entitled to a refund of any fare which he may have paid.

(5) Any person charged with any 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 the 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. 16

101. 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 102 shall apply to all such proceedings.

Recovery of
fees and
damages

102. 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 the Authority, or any damages in respect of injury done in the commission of the offence by such person to property or premises owned or in use or occupation by the Authority, or any costs or expenses incurred by the Authority 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. 20

103. The Authority shall publish brief particulars of every offence for which any penalty is imposed by this Act affecting persons other than 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 Board may direct and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed:

Short particulars of offences and penalties to be exhibited

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 offence.

PART XV

APPOINTMENT OF STAFF: CONDITIONS OF EMPLOYMENT AND DISCIPLINE

104.-(1) Subject to the provisions of this Act, the Board may appoint such persons as employees as may be necessary for the proper and efficient performance of the functions of the Authority, under such terms and conditions as the Board may deem fit.

Appointment of staff

(2) The Board may, subject to such conditions as it may deem fit, delegate its powers under subsection (1) to a committee of the Board, the General Manager or any other employee.

(3) The General Manager may, by notice in writing, authorize any employee appointed under this section to maintain order upon any premises occupied by the Authority or in any train or vehicle of the Authority and any employee so authorized shall, in the performance of such duty, have all the powers, rights, privileges and protection of a police officer.

105.(1) Where any employee dies or leaves the service of the Authority and, at the time of such death or termination of service, any property of the Authority was in his possession or custody or any premises of the Authority 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 Authority or to vacate such premises, as the case may be.

Property of Authority in custody of employee, etc.

(2) If any property or premises to which subsection (1) refers is not delivered to the Authority or vacated, as the case may be, the General Manager shall give notice in writing to the person appearing to him most likely to be in possession of such property or in occupation of such premises to deliver to the Authority 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 General Manager 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 Authority or, as the case may require, to evict from such premises any person found therein.

Conditions of service and regulation of conduct of employees

106.-(1) Subject to the provisions of this Act, the Board may, with and the approval of the Council, make regulations for determining the conditions of service of employees and for regulating their conduct while on duty and in particular, but without prejudice to the generality of the foregoing, such regulations may relate to-

- (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 grant 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 the Authority for housing or accommodation provided by the Authority;
 - (iii) repayment of money lent by the Authority together with interest thereon;
 - (iv) payment due to the Authority in respect of any electricity, water or other services.

(2) Different regulations may be made under this section in relation to different categories of employees, and any such regulations 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.

Liability of members, etc
Cap. 16
Acts, 1970
No. 7

Acts, 1974
No. 37

107. Without prejudice to the provisions of section 284A of the Penal Code or of the Specified Officers (Recovery of Debts) Act 1970 or of the Parastatal Employees (Recovery of Debts) Act, 1974 no act or thing done, or omitted to be done, by any member of the Board or by any officer, servant or agent of the Authority shall, if done or omitted *bona fide* in the execution or purported execution of his duties as such member, officer, servant or agent, subject any such person to any action, liability or demand whatsoever.

- 108.** No pension or right to a pension payable under any scheme or from any fund established under the powers conferred by this Act shall be liable to be attached, sequestered or levied upon for or in respect of any debt or claim. Protection of pensions payable under this Act
- 109.** Any employee who is convicted of an offence under section 94 or 95 may be summarily dismissed from the service of the Authority by the General Manager without any further proceedings being taken under any regulations relating to discipline. Summary dismissal of convicted employees
- 110.** The Authority may, for the purposes of this Part, give consideration to any representations made by any person or organization and in particular, but without prejudice to the generality of this section, the Authority may give consideration to proposals made by organizations and associations of or representing employees relating to salaries, salary scales, wages, allowances or other conditions of service of employees. Authority may consult with organization of employees

PART XVI

GENERAL PROVISIONS

- 111.**-(1) Subject to the provisions of this Act, the Council, the Board and the General Manager may delegate to any person any of the powers vested in them under this Act and may grant to any person powers of attorney. Delegation and signification
- (2) An act or decision, or the notification thereof, of the Council, the Board or the General Manager under this Act may be signified under the hand of an employee authorized for that purpose, as the case may require.
- 112.**-(1) The Authority shall not be liable for any loss or damage caused by fire from any engine of the Authority to any building, or any property therein, if any part of such building is within sixty metres of the rails of the railway. Liability for damage caused by fire
- (2) Subject to the provisions of subsection (1), the Authority shall be liable for any loss or damage caused by fire from any engine of the Authority where there is negligence in the working or the construction of such engine.
- (3) Subject to the provisions of subsection (1), the Authority shall be liable for any loss or damage caused by fire from any engine of the Authority 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 Authority; 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 that time by the Authority, such owner or occupier had given notice in writing of such fact to the General Manager 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 General Manager-

- (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 and of the loss or damage suffered by him:

Provided that the maximum compensation payable by the Authority under the provisions of this subsection shall not exceed ten thousand shillings.

Burden of proof

113. In any proceedings against the Authority for compensation under the provisions of section 43, 44 or 49, 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

114. (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 the Authority for carriage or warehousing unless a claim in writing, giving such particulars as may be reasonably necessary, is given to the General Manager within six months of the date on which such goods were accepted by the Authority.

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

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

(3) Where the person claiming compensation proves that it was impracticable for him to notify the General Manager of, or give to the General Manager, 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.

Limitation.

115. Where any action or legal proceeding is commenced against the Authority for any act done in pursuance of, or in the exercise or purported exercise of its functions under this Act, or in respect of any alleged neglect or default in the exercise of any such functions, the following provisions shall apply-

- (a) the action or legal proceeding shall not be commenced against the Authority 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 the General Manager 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.

116. Notwithstanding anything to the contrary contained in any written law, where any judgment or order has been obtained against the Authority, no execution or attachment, or process in the nature thereof, shall be issued against the Authority or against any property of the Authority; but the General Manager shall cause to be paid out of the revenue of the Authority such amounts as may, by the judgment or order, be awarded against the Authority to the person entitled there to.

Restriction
on execution
against
property of
Authority

117.-(1) Where the amount paid for the carriage of any passenger or goods by the Authority is found to be incorrect, then if such amount is--

Overcharge
and under-
charge

- (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 Authority 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 General Manager; or
- (ii) by the General Manager 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 Authority, 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 Authority 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 General Manager by the person claiming such refund.

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

Medical examination of person claiming compensation

118. Whenever any person claims compensation against the Authority in respect of any injury alleged to have been suffered by him as a result of the operations of the Authority, 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.

Service of notice, etc., on General Manager

119.-(1) Any notice or other document required or authorized under this Act to be served on the Authority or General Manager may be served-

- (a) by delivery of the notice or other document to the General Manager or to any authorized employee; or
- (b) by leaving it at the office of the General Manager; or
- (c) by sending it by registered post to the General Manager.

(2) For the purposes of subsection (1), "office of the General Manager" shall include the principal office of the Authority in the United Republic.

Service of notice, etc., by General Manager

120. Any notice or other document required or authorized under this Act to be served on any person by the Authority or the General Manager or any employee may be served-

- (a) by delivering it to that person; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it by registered post addressed to that person at his usual or last known address.

Regulations

121.-(1) The Council may make regulations generally with respect to the services performed and the facilities provided by the Authority under this Act for the maintenance of order on any premises occupied by the Authority or on any train or vehicle operated by the Authority 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 the Authority, and the manner and speed at which such train or vehicle may be operated;
- (b) the loading and 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 the Authority, 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 the Authority;
- (e) the reservation of any portion, of any such premises, train or vehicle, for the exclusive use of 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 of the Authority;

- (h) the control of all persons on any such premises, the maintenance of order thereon and 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 the Authority;
- (j) the insurance of passengers and goods carried by, and of goods stored by the Authority;
- (k) the sale of any article on any premises occupied by the Authority;
- (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 the Authority 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 the Authority;
- (n) the prevention of fraudulent practices by or in respect of persons carried by, or otherwise using any service performed or facilities provided by the Authority;
- (o) the safety and protection of passengers and goods carried, and of persons employed by the Authority;
- (p) the procedure to be followed in the conduct of inquiries into accidents; and
- (q) the sale, disposal or writing off of any property or assets of the Authority;
- (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 the salaries, wages or allowances of persons employed by the Authority;
- (u) expenditure not wholly chargeable to ordinary working expenses, where such expenditure is expenditure on a new railway or rolling stock or surveys or other works not provided for in the approved budget in any financial year of the Authority or carried forward from the approved budget of the previous financial year;
- (v) expenditure on any item in excess of the cost entered in the approved budget;
- (u) any matter authorized to be prescribed under this Act.

(2) Regulations made under this section shall be published in the *Gazette*.

122.-(1) The Tanzania-Zambia Railway Authority Agreement (Implementation) Act, 1968 is hereby repealed.

(2) Notwithstanding the repeal of the Tanzania-Zambia Railway Authority Agreement (Implementation) Act, 1968, all the assets and liabilities of the Authority existing immediately before the commencement of this Act shall continue to vest in or, as the case may be, subsist against the Authority, together with all the rights and obligations

Real and
saving
Acts, 1968
No. 61

arising out of any contract or otherwise, as if this Act had not come into force and the said Act had not been repealed; and the repeal of the said Act shall not affect the terms and conditions on which any person held office or was employed by, the Authority immediately before the commencement of this Act.

Implementa-
tion of
Railway
Project

123.-(1) The United Republic may construct or cause to be constructed a railway linking the United Republic with the Republic of Zambia and operate and provide, or arrange for the operation and provision of, rail transport services between the two countries.

Acts 1967
No. 42
Community
Acts, 1967
No. 1

(2) The provisions of subsection (1) shall, for the purpose of subsection (3) of section 10 of the Treaty for East African Co-operation (Implementation) Act, 1967, be deemed to make provision in express terms indicating the intention that subsection (1) shall have effect notwithstanding the provisions of section 21 of the East African Railways Corporation Act, 1967.

FIRST SCHEDULE

TANZANIA-ZAMBIA RAILWAY AUTHORITY AGREEMENT

AGREEMENT MADE THIS 2ND DAY OF MAY, 1975, BETWEEN THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA AND THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA (HEREINAFTER TOGETHER CALLED "THE CONTRACTING GOVERNMENTS 11).

WHEREAS the Contracting Governments have for the purpose of co-ordinating the implementation of the Tanzania-Zambia Railway Project established-

- (i) The Tanzania-Zambia Railway Council of Ministers (hereinafter referred to as "the Council");
- (ii) By an Agreement dated 3rd October 1968, (subsequently replaced by an Agreement dated 17th December, 1972; the Tanzania-Zambia Railway Authority (hereinafter called "the Authority") which has in their respective countries the capacity and status of a body corporate;

AND WHEREAS the Contracting Governments intend that the Tanzania-Zambia Railway Project should continue as a single undertaking under their joint ownership and control;

AND WHEREAS it is now expedient to make further provision relating to the Council and the Authority and for the ownership, management, control and operation of the Tanzania-Zambia Railway jointly as aforesaid:

Now, THEREFORE the Contracting Governments have agreed as follows: -

ARTICLE I

- (i) The Council shall consist of three Ministers of the Government of the United Republic of Tanzania and three Ministers of the Government of the Republic of Zambia designated by their respective Governments to be the members of the Council.
- (ii) The Council shall from time to time meet for the, transaction (if business at such time and place as it may decide, but not less than twice in any financial year.
- (iii) The Council shall regulate its own procedure, provided however, that decisions of the Council shall be by a majority vote and shall include an affirmative vote of at least one Minister representing each of the Contracting Governments.
- (iv) In the event of any matter under consideration by a meeting of the Council resulting in a disagreement between the Ministers designated by the Government of the United Republic of Tanzania and the Ministers designated by the Government of the Republic of Zambia, such matter shall, unless by agreement it is to be considered at a subsequent meeting or meetings of the Council, be referred to the Government of the United Republic of Tanzania and the Government of the Republic of Zambia for their decision.

ARTICLE II

The Council shall-

- (a) be responsible to the Government of the United Republic of Tanzania and, the Government of the Republic of Zambia for all matters relating to. the construction and operation of the Tanzania-Zambia Railway;

- (b) consider and determine all matters of policy relating thereto;
- (c) give such directions to the Board of Directors of the Authority (hereinafter referred to as "the Board") as may be necessary to discharge the responsibilities of the Council and to implement its decisions;
- (d) consider and approve-
 - (i) any major change in the tariff of rates, fares and other charges made for the services performed, and the facilities provided, by the Authority;
 - (ii) any major revision of salaries, wages or other terms and conditions of service of employees;
 - (iii) development plans;
 - (iv) any capital work referred to it by the Board;
 - (v) construction of new branch lines;
 - (vi) the raising of new capital;
- (e) give directions to the Board concerning any matter involving agreement with, or the interest of, any country other than the Contracting States.

ARTICLE III

- (i) There shall be a Board of Directors for the Authority which, subject to the overall control of the Council, shall be responsible for the policy, control and management of the Authority.
- (ii) The Board of Directors shall consist of not less than three members but not more than five members or their alternates appointed by the Government of the United Republic of Tanzania and not less than three members but not more than five members or their alternates appointed by the Government of the Republic of Zambia:

Provided that the number of Directors representing each Contracting Government may be increased from three to four or five by a resolution of the Council.
- (iii) In appointing the persons referred to in Clause (ii) of this Article each Contracting Government shall have regard to the desirability of appointing persons with experience in commerce, industry, finance or administration, or with technical experience or qualifications.
- (iv) Each Contracting Government shall in every alternate calendar year, designate as chairman of the Board one of the members of the Board appointed by that Contracting Government:

Provided that the person who is immediately before the coming into force of this Agreement the chairman of the Board, shall, unless he resigns or is otherwise removed by the Contracting Government which appointed him, continue to be the chairman of the Board until the end of the calendar year in which this Agreement comes into force.

ARTICLE IV

- (i) A General Manager and a Deputy General Manager shall be appointed respectively by the Government of the Republic of Zambia and the Government of the United Republic of Tanzania.
- (ii) In appointing the persons referred to in Clause (ii) of this Article each Contracting Government shall have regard to the desirability of appointing persons having wide experience of, and having shown capacity in matters pertaining to the operation and administration of railways.

ARTICLE V

Each Contracting Government shall appoint for the Tanzania-Zambia Railway such number of Inspectors of Railways as may be agreed upon between the two Governments. The Inspectors of Railways so appointed shall liaise and co-ordinate among themselves in the performance of their duties.

ARTICLE VI

The functions of the Authority shall be--

- (a) to own and operate on behalf of the Contracting Governments the Tanzania-Zambia Railway;
- (b) to act as agent of the Contracting Governments in all matters relating to the design and construction of the Railway and to the acquisition of rolling stock, locomotives, train equipment, spare parts and accesses;
- (c) to recruit, employ and provide for the training of staff for the management and operation of the Railway on an equal basis unless otherwise authorized by the Board;
- (d) to give effect to such directions as may, from time to time, be given to the Board by the Council;
- (e) to carry out such operations as are incidental, ancillary or conducive to the provision of railway transport.

ARTICLE VII

- (i) The financial year of the Authority shall commence on the first day of July of each calendar year and end on the thirtieth day of June of the next following calendar year.
- (ii) The Board shall ensure that proper accounts and other records in relation thereto are kept by the Authority and shall prepare in respect of each financial year of the Authority a statement of accounts.
- (iii) The accounts of the Authority shall be audited by such independent auditors as the Board may appoint from time to time.
- (iv) As soon as the accounts of the Authority have been prepared and audited, which should not be later than six months after the end of each financial year, the Board shall submit a copy of the statement of accounts and a report on the activities of the Authority for the same year to the Council.
- (v) The Board shall, prior to the commencement of each financial year, cause to be prepared and submitted for the approval of the Council estimates of revenue and expenditure of the Authority for such financial year.

ARTICLE VIII

- (i) The Head Office of the Authority shall be in Dar es Salaam.
- (ii) The Authority shall establish Regional Offices in Mpika and Dar es Salaam and other offices, in such other places as it may deem necessary.

ARTICLE IX

The Contracting Governments undertake--

- (a) to vest in the Authority in such a manner as may be appropriate, title to the assets in respect of which the Contracting Governments have incurred liabilities to the Government of the People's Republic of China or which they may hereafter acquire for the purpose of the Railway;
- (b) until such time as the Railway shall have become operational, to contribute in equal parts to the funds and resources of the Authority;
- (c) to confer on the Authority in their respective countries such rights in or over land as may be necessary to enable the Authority to operate the Railway and to protect its assets;
- (d) to enact in their respective countries legislation in terms to, be agreed between them providing for and regulating the manner in which the Railway shall be operated;
- (e) to exempt the Authority from the payment in their respective countries of-
 - (1) taxes on capital or income;
 - (2) customs and excise duties on goods imported or purchased by the Authority for its own use;
 after receiving written approval from the Council of an application made in that behalf by the Authority;
- (f) to facilitate the transfer of funds between the Contracting States for the purposes of the Authority, through their respective central banks, subject to exchange control laws and regulations in force in each Contracting State.

ARTICLE X

Each Contracting Government undertakes-

- (a) to grant the citizens of the other Contracting State in the service of the Authority within its territory exemption from such provisions of the law relating to immigration, including exemption from alien registration, work and residence permits, as may be reasonably required for the purposes of the Authority, after receiving written approval from the Council of an application made in that behalf by the Authority;
- (b) to take such measures as may be necessary to ensure that the citizens of the other Contracting State in the service of the Authority within its territory pay taxes on any income or class of incomes accrued in, or derived from it,; territory in accordance with the scale of assessment applicable to their country of origin, or country of residence, whichever is less;
- (c) to grant the citizens of the other Contracting State in the service of the Authority within its territory, exemption from any obligation relating to, or arising out of, membership of any statutory provident fund or scheme, so however that any statutory contribution which the Authority is liable to make in respect of any benefit under such statutory provident fund or scheme shall be uniform for all its employees in the Contracting States;
- (d) to facilitate the transfer from its territory to the territory of the other Contracting State any contributions due to the credit of any person employed in the service of the Authority within its territory by reason of the membership of such person of any statutory provident fund or scheme established in that other Contracting State.

ARTICLE XI

The Contracting Governments have agreed that the Ministers responsible for railways in the Contracting States shall liaise and co-ordinate with each other in all matters affecting the public interest relating to the ownership, management, control and operation of the Tanzania-Zambia Railway.

ARTICLE XII

The Contracting Governments have agreed that-

- (a) citizens of each Contracting State in the service of the Authority shall be governed by the law relating to workmen's compensation in force in their country of origin, notwithstanding that the accident in respect of which compensation is claimed occurred while the injured workman was serving in a Contracting State which is not his country of origin;
- (b) the Authority shall take such measures as may be necessary to secure uniform compensation for all its employees in the Contracting States.

ARTICLE XIII

- (i) The Government of the United Republic of Tanzania shall become entitled to one half and the Government of the Republic of Zambia shall become entitled to the other half of each and every payment of interest and repayment of capital due from the Authority in respect of a sum equivalent to the aggregate of the value of the assets vested in the Authority pursuant to Article IX (a) and the amounts contributed by the Contracting Governments to the funds and resources of the Authority.
- (ii) The sum aforesaid shall be paid by the Authority to the Contracting Governments in such installments as the Council shall prescribe.
- (iii) For the purpose of this Article the value of the assets vested in the Authority pursuant to Article IX (a) shall be deemed to be a sum equivalent to their cost to the Contracting Government..

ARTICLE XIV

The ownership of the Authority and the financial responsibility for it shall lie with the Contracting Governments in equal shares.

ARTICLE XV

In the event of the Council agreeing that the Authority should be provided with additional capital from the Government or that guarantees should be given by these Governments in respect of loans or credits to be by the Authority from other sources such additional capital or guarantees shall be provided or given by the Contracting Governments in equal amounts.

ARTICLE XVI

The Contracting Governments undertake to make maximum use of the facilities provided by the Railway.

ARTICLE XVII

The rate structure for the carriage of goods and passengers shall be such that taking one year with another, the revenues of the Authority will be sufficient to cover operating expenses, financial commitments and the replacement of assets.

ARTICLE XVIII

In case of dissolution of the Authority, the Contracting Governments shall agree on the division of assets and liabilities, which shall be on the basis of the market value of such assets.

ARTICLE XIX

In the event of disagreement by the Contracting Governments with respect to the interpretation of the provisions of this Agreement or the provisions of any legislation enacted under Article IX (d), such disagreement shall be referred to an Arbitrator or Board of Arbitrators appointed by the Contracting Governments. The decision of the Arbitrator or Board of Arbitrators shall be binding on the parties; and the rules of such arbitration shall be determined by the Contracting Governments.

ARTICLE XX

THIS AGREEMENT shall come into force on a day to be appointed by agreement between the Contracting Governments and on that day shall take effect in substitution for the Agreement between the Contracting Governments dated 17th December, 1972.

THUS DONE AND SIGNED for and on behalf of the Government of the Republic of Tanzania at Dar es Salaam, this 2nd day of May, 1975.

A. C. TANDAU

THUS DONE AND SIGNED for and on behalf of the Government of the Republic of Zambia at Dar es Salaam, this 2nd day of May, 1975.

N. S. MULENGA,

SECOND SCHEDULE

(Section 46)

Specified Articles:

1. Gold silver and other precious metals, coined or uncoined manufactured or unmanufactured.
2. Precious and semi-precious stones, jewelry 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, radiograms, record players, tape recorders and all other electronic instruments and equipment.
16. Ivory in any form.
17. Any article the value of which exceeds twenty thousand shillings per tonne.

Passed in the National Assembly on the seventeenth day of July, 1975.


 Clerk of the National Assembly