



Road and Rail Traffic Act 1933

1933 CHAPTER 53

PART II

RAILWAY TRAFFIC.

- 37 Right of railway company, with approval of Rates Tribunal, to make agreed charges for the carriage of merchandise.**
- (1) Notwithstanding anything in the Railways Act, 1921, but subject to the provisions of this Part of this Act, a railway company may, if it thinks fit, make such charge or charges for the carriage of the merchandise of any trader, or for the carriage of any part of his merchandise, as may be agreed between the company and that trader:
- Provided that any such agreed charge, including the conditions attaching thereto, shall require the approval of the Tribunal, and the Tribunal shall not approve such a charge if, in its opinion, the object to be secured by the making of the charge could, having regard to all the circumstances, adequately be secured by the grant of appropriate exceptional rates under the Railways Act, 1921.
- (2) In this Part of this Act, a charge so agreed as aforesaid, including the conditions attaching thereto, is referred to as "an agreed charge."
- (3) Particulars of an agreed charge shall be lodged with the Tribunal within seven days after the date of the agreement, and notice of an application to the Tribunal for its approval of the agreed charge shall be given in such manner as the Tribunal may direct.
- (4) The Tribunal may approve an agreed charge either for such period as it thinks fit or without restriction of time, and the date on which the charge shall become operative, or as from which it shall be deemed to have become operative, shall be such date, not being earlier than the date on which application for approval was lodged, as may be fixed by the Tribunal.
- (5) On an application to the Tribunal for its approval of an agreed charge—
- (i) any trader who considers that his business will be detrimentally affected if the agreed charge is approved and is made by the railway company, or that

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his business has been detrimentally affected as a result of the making of the charge by virtue of a previous approval; and

- (ii) subject to the provisions of the next succeeding section, any representative body of traders,

shall, after giving such notice of objection as may be prescribed by the Tribunal, be entitled to be heard in opposition to the application.

- (6) Any trader who considers that his business will be detrimentally affected if an agreed charge is approved and is made by the railway company, or that his business has been detrimentally affected as a result of the making of an agreed charge, may at any time apply to the Tribunal for a charge to be fixed for the carriage of his merchandise (being the same merchandise as or similar merchandise to any merchandise to which the agreed charge relates) by the railway company with which he contracts for the carriage of that merchandise, whether the same company by which the agreed charge is proposed to be made or is being made, or another company; and, if the Tribunal is satisfied that the business of the trader will be or has been so detrimentally affected, it may fix a charge (including the conditions to be attached thereto) to be made by the railway company with which he contracts for the carriage of such merchandise as the Tribunal may determine.

The Tribunal, in fixing a charge, may fix it either for such period as it thinks fit or without restriction of time, and may appoint the date on which it is to come into operation, but no such charge shall be fixed for a period in excess of that for which the agreed charge complained of by the trader has been approved.

An application under this subsection may, if it be convenient, be combined with an objection by the trader to the application for the approval of the agreed charge of which he complains.

- (7) Where the Tribunal has approved an agreed charge without restriction of time—
 - (i) any trader who considers that his business has been detrimentally affected as a result of the making of the agreed charge, and
 - (ii) subject to the provisions of the next succeeding section, any representative body of traders,

may at any time after the expiration of one year from the date of the approval apply to the Tribunal for its approval of the agreed charge to be withdrawn and, upon any such application, the Tribunal may withdraw, or refuse to withdraw, its approval, or may continue its approval subject to such modifications being made in the charge as it thinks proper and as the railway company and the trader to whose merchandise the charge is applicable are prepared to agree to:

Provided that, where under the last preceding subsection the Tribunal has fixed a charge in favour of a trader complaining of an agreed charge, the trader shall not be entitled to make an application under this subsection in respect of that agreed charge in so far as it relates to merchandise which is the same as or similar to any merchandise to which the charge so fixed relates.

Where under this subsection the Tribunal withdraws its approval of an agreed charge or continues its approval of an agreed charge subject to modifications, any charges fixed under the last preceding subsection in favour of a trader complaining of that agreed charge shall cease to operate, or shall be subject to such corresponding modifications as the Tribunal may determine.

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For the purposes of applications under this subsection a decision of the Tribunal continuing its approval of a charge subject to agreed modifications shall be deemed to be the approval of an agreed charge.

- (8) On any application under this section, the Tribunal shall have regard to all considerations which appear to it to be relevant and, in particular, to the effect which the making of the agreed charge or the fixing of a charge is likely to have, or has had, on—
- (a) the net revenue of the railway company; and
 - (b) the business of any trader by whom, or in whose interests, objection is made to approval being given to an agreed charge, or application is made for approval to be withdrawn.
- (9) A railway company shall, in respect of an agreed charge which is for the time being approved by the Tribunal and in respect of a charge fixed under this section which is for the time being operative, be exempt from the operation of—
- (i) so much of section ninety of the Railways Clauses Consolidation Act, 1845, of section eighty-three of the Railways Clauses Consolidation (Scotland) Act, 1845, and of any section of a local and personal or private Act, as relates to the obligation of a railway company to make equal charges to all persons under like circumstances; and
 - (ii) so much of section two of the Railway and Canal Traffic Act, 1854, and of any section of a local and personal or private Act, in relates to the obligation of a railway company to accord no undue preference to any person, company or description of traffic, and section twenty-seven of the Railway and Canal Traffic Act, 1888, which relates to complaints with respect to undue preference.
- (10) Notwithstanding anything in this section, any port or harbour authority, dock company, or authority owning and working docks, which has reason to believe that any railway company is by an. agreed charge placing the port, harbour, or dock of the authority or dock company at an undue disadvantage as compared with any other port, harbour, or dock to or from which traffic is or may be carried by means of the lines of the railway company, either alone or in conjunction with those of other railway companies, may make complaint thereof to the Railway and Canal Commissioners, and the Commissioners shall have the like jurisdiction to hear and determine the subject matter of any such complaint as they have to hear and determine a complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts, and section twenty-seven of the Railway and Canal Traffic Act, 1888, shall apply with respect to any such complaint.
- (11) The provisions of section fifty-four of the Railways Act, 1921 (which relates to the publication of schedules of standard charges, &c.) and, in the case of a light railway company, the enactments relating to the publication of rates, shall not apply in relation to charges approved or fixed under this section, but where the Tribunal approves or fixes a charge, or continues its approval of a charge, or withdraws an approval previously given to a charge, the decision of the Tribunal, and also where the Tribunal approves or fixes a charge, or continues its approval of a charge subject to modifications, particulars of that charge, including the conditions attaching thereto, or, as the case may be, particulars of the modifications, shall be reported by the railway company concerned to the Minister within fourteen days after the decision of the Tribunal, or such longer period as the Minister may allow, and all such charges and the conditions attaching thereto shall be recorded in such manner, and be open to

inspection by any person without payment at such places and times, as the Tribunal may direct.

- (12) An agreed charge which is for the time being approved by the Tribunal and a charge fixed under this section which is for the time being operative shall be deemed to be exceptional rates for the purposes of the following provisions of Part III of the Railways Act, 1921, which relate to the modification, review and revision of charges, that is to say,—section thirty-five, subsection (2) of section thirty-seven, section thirty-nine and section fifty-nine.
- (13) The provisions of sections twenty-one to twenty-six of the Railways Act, 1921 (which relate to the procedure of the Tribunal under Part III of that Act, to additional members of the Tribunal, to appeals from its decisions and to its staff and expenses) shall apply in relation to its duties, powers and proceedings under this Part of this Act as they apply in relation to its duties, powers and proceedings under the said Part III.

38 Provisions as to applications and objections by representative bodies.

- (1) For the purposes of the provisions of the last preceding section which relate to applications and objections to applications, the expression " a representative body of traders " means an association or body of persons which satisfies the Tribunal that it represents a substantial number of traders interested in, or likely to be affected by the decision on, the application.
- (2) The Tribunal may, if it thinks fit, require that a representative body making, or objecting to, an application shall give security in such manner and to such amount as the Tribunal thinks necessary for costs which may be incurred.

39 Review of agreed charges and exceptional rates competing with coastwise shipping.

- (1) In this section the expression " charge " (except in the phrase " agreed charge ") includes any charge (whether described as a charge, or as a rate, or otherwise) which is made by any carrier in respect of the carriage of merchandise.
- (2) If at any time a representation is made to the Minister by any body which, in the opinion of the Board of Trade, is properly representative of the interests of persons engaged in the coastwise shipping business (in this section referred to as " coastal carriers ") that any agreed charges or exceptional rates which are being made or charged by a railway company in competition with coastal carriers—
- (a) place coastal carriers at an undue or unfair disadvantage; or
 - (b) are inadequate, having regard to the cost of affording the service or services in respect of which they are made or charged,

the Minister shall consult with the Board of Trade upon the matter and if, after such consultation, it appears to him *prima facie* that the complaint is one which in the national interests should be investigated, he shall refer the matter to the Tribunal for investigation and review.

- (3) Upon any reference to the Tribunal under the preceding subsection, the Tribunal shall hold an inquiry and investigate all matters which appear to it to be relevant, including the circumstances in which the agreed charges or exceptional rates complained of are being made or charged by the railway company and their adequacy or inadequacy, having regard to the cost of affording the service or services in respect of which they are made or charged, and shall have regard to the charges for the carriage of

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merchandise by any route which is in competition with the route to which any agreed charge or exceptional rate complained of applies, whether any such charge is payable in respect of carriage by rail, by sea, or by road, or in respect of carriage partly by one of those forms of transport and partly by another of them, or by all of them.

- (4) If, after examining all witnesses whose evidence it considers to be necessary and after giving all parties whom it considers to be concerned an opportunity of calling witnesses and being heard, the Tribunal is of opinion that, having regard to all the circumstances, any agreed charges or exceptional rates made or charged by the railway company in competition with coastal carriers—
- (a) place coastal carriers at an undue or unfair disadvantage in the competition; or
 - (b) are inadequate, having regard to the cost of affording the service or services in respect of which they are made or charged,

and that, in either case, the action of the railway company is by reason of its prejudicial effect upon the interests of coastwise shipping undesirable in the national interests, the Tribunal may by order cancel or vary all or any of those agreed charges or exceptional rates, or may make such other order upon the railway company as in the circumstances of the case it thinks proper, and any order of the Tribunal may be expressed to operate for so long only as any conditions specified therein with respect to charges on competitive routes, or otherwise, are satisfied.

Where under this subsection the Tribunal cancels or varies an agreed charge, any charges fixed under this Part of this Act in favour of a trader complaining of that agreed charge shall cease to operate, or shall be subject to such corresponding modifications as the Tribunal may determine.

- (5) The Tribunal, on an application made to it by the railway company, or on a subsequent reference to it under subsection (2) of this section, may cancel or vary any order made under the preceding subsection.
- (6) There shall be constituted a panel (hereinafter referred to as the "shipping panel") consisting of six persons nominated by the President of the Board of Trade, after consultation with such persons as he may consider to be properly representative of the interests of coastal carriers, and for the purposes of the powers and duties of the Tribunal under this section there shall be added to the Tribunal one additional member selected by the Minister from the shipping panel, and subsection (4) of section twenty-four of the Railways Act, 1921, shall not apply.

Subsections (2) and (5) of the said section twenty-four shall apply in relation to a member of the shipping panel as they apply in relation to a member of the general panel.

- (7) Upon any inquiry under this section the President of the Tribunal shall, notwithstanding anything in section twenty-five of the Railways Act, 1921, have a second or casting vote.
- (8) Section thirty-nine of the Railways Act, 1921, shall have effect as if the words "shipping or," and the words "coastwise shipping or," were omitted therefrom.

40 Amendment of ss. 37, 38, 47 of Railways Act, 1921.

- (1) Notwithstanding anything in sections thirty-seven and forty-seven of the Railways Act, 1921 (which sections relate to new exceptional rates and through rates and fares respectively) it shall not be necessary for a railway company to obtain the consent

of the Tribunal to a new exceptional rate which is less than five per cent. below the standard rate chargeable, or to a through rate which is less than five per cent. below the combined standard charges of all the forwarding companies.

- (2) The fact that an exceptional rate which a railway company proposes to increase would, when increased, be less than five per cent. below the standard rate chargeable shall not of itself necessitate the approval of the Tribunal being obtained to the increase if, but for that fact, such approval would not be required, and accordingly in subsection (3) of section thirty-eight of the Railways Act, 1921, the words " provided that it is not less than five per cent. below the standard rate chargeable " and the words " or if the rate when increased would be less than five per cent. below the standard rate chargeable " shall cease to have effect.

41 Approval of Minister required to opening of new lines, conversion to electric traction, and c.

- (1) A railway company which—
- (i) proposes to open any railway, or any portion of a railway, for the public conveyance of passengers; or
 - (ii) proposes to open any additional line of railway, deviation line, station, junction or level crossing, which forms a portion of, or is directly connected with, a railway used for the public conveyance of passengers; or
 - (iii) having adapted for electric traction any railway so used, proposes to open it for such traction,
- shall, before giving effect to its proposals, obtain the approval of the Minister, but the Minister shall not withhold his approval if he is satisfied that the use of the railway or works in question, or of the railway as so adapted, will not be attended with danger to the public using it.
- (2) The Minister may direct any such inspection to be made as he considers necessary for enabling him to decide whether his approval ought to be given in any case arising under this section, and sections three and four of the Regulation of Railways Act, 1871 (which sections relate to the appointment and powers of inspectors of railways) shall apply in relation to any such inspection.
- (3) If a railway company contravenes any of the provisions of subsection (1) of this section, it shall, in respect of each day during which the contravention continues, forfeit to the Crown twenty pounds to be recovered by action in the High Court or, in the case of Scotland, in the Court of Session.
- (4) Sections four to six of the Regulation of Railways Act, 1842, and section five of the Regulation of Railways Act, 1871, shall cease to have effect.

42 Amendments as to level crossings.

- (1) The Minister, if upon an application made to him by the railway company concerned he is satisfied that it is expedient so to do, may direct that the gates on any level crossing over a public road shall, instead of being kept closed across the road, be kept closed across the railway, either constantly, or on such days, or during such portions of any day, as he thinks fit, and, if he so directs, the gates shall, notwithstanding anything in any Act (whether a public general Act or not) to the contrary, be kept closed in accordance with his direction, except when engines or vehicles passing along the railway have occasion to cross the road, and, if the person entrusted with the care

of the gates fails to comply with the direction of the Minister, he shall on summary conviction be liable to a penalty of forty shillings for each offence.

- (2) The powers conferred upon the Minister by the preceding subsection shall be deemed to be in addition to, and not in derogation of, any powers conferred upon him by section forty-seven of the Railways Clauses Consolidation Act, 1845, or section forty of the Railways Clauses Consolidation (Scotland) Act, 1845, or by any provision in a local and personal or private Act which relates to the closing of gates on level crossings.
- (3) So much of section forty-eight of the Railways Clauses Consolidation Act, 1845, and of section forty-one of the Railways Clauses Consolidation (Scotland) Act, 1845, as requires that, where a railway crosses a road to which the section in question applies on a level adjoining to a station, all trains shall be made to slacken their speed before arriving at the road, and shall not cross it at a greater rate of speed than four miles an hour, and so much of any section of a local and personal or private Act as contains provisions substantially to the like effect, shall cease to have effect.

43 Amendment as to duty of railway company to report certain accidents.

- (1) Section six of the Regulation of Railways Act, 1871 (which imposes upon a railway company the duty of notifying to the Minister certain accidents) as extended by subsection (2) of section thirteen of the Railway Employment (Prevention of Accidents) Act, 1900, shall have effect subject to the following modifications :—
 - (i) an accident which is attended with personal injury to a person or persons in the employment of the railway company, but which does not disable any such person for more than three days from earning full wages at the work at which he was employed, need not be notified to the Minister if, but for the fact that it was attended with personal injury, notification would not have been required by the said section six as so extended; but if, and so soon as, it is known that any person injured has been so disabled for more than three days, the company shall notify the accident by the earliest practicable post;
 - (ii) an accident which occurs to a person not in the employment of the railway company, and which is not connected with the movement of any engine or railway vehicle, need not be notified to the Minister by the earliest practicable post, but all such accidents as are referred to in this paragraph shall be notified to the Minister in such manner and at such times as may be required by directions given by him under the said section six.
- (2) Nothing in the Notice of Accidents Acts, 1894 and 1906, shall be construed as requiring notice to be given of any accident if, but for the provisions of this section, notification of that accident would have been required by section six of the Regulation of Railways Act, 1871, as so extended as aforesaid.

44 Amendments as to notices in respect of road services, and as to publication of rates for the conveyance of merchandise by such services.

The following provisions of the London Midland and Scottish Railway (Road Transport) Act, 1928, the Great Western Railway (Road Transport) Act, 1928, the London and North Eastern Railway (Road Transport) Act, 1928, and the Southern Railway (Road Transport) Act, 1928, shall cease to have effect, that is to say,—

- (i) section six of each of the said Acts, which requires the railway company to give notice to the Minister of any regular service of road vehicles provided by the company, to give public notice of its intention to withdraw any regular service

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- of road vehicles (other than an experimental service) and to obtain the consent of the Minister if objection is raised to its proposal; and
- (ii) subsection (2) of section eight of each of the said Acts, which requires that where a regular service of road vehicles is provided by the company for the conveyance of merchandise, a record of its current rates and charges for such conveyance shall be kept deposited for public inspection.

45 Interpretation of Part II.

In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them :—

" Agreed charge " has the meaning assigned to it by section thirty-seven of this Act;

" Merchandise " has the same meaning as in the Railways Act, 1921;

" Minister " means the Minister of Transport;

" Railway " includes a light railway, not being a light railway which is laid wholly or mainly along a public carriage way and is used wholly or mainly for the carriage of passengers ;

" Railway company " includes any person or body of persons, whether incorporated or not, being the owner or owners or lessee or lessees of, or working, a railway;

" Trader " means a person sending or receiving, or desiring to send or receive, merchandise by railway;

" Tribunal " means the Railway Rates Tribunal established under the Railways Act, 1921;

" Undue preference " has the same meaning as in the Railway and Canal Traffic Act, 1888.