



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

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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.