

LAWS OF KENYA

THE KENYA RAILWAYS CORPORATION ACT

CHAPTER 397

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CHAPTER 397

THE KENYA RAILWAYS CORPORATION ACT

Commencement: 20th January, 1978

An Act of Parliament to provide for the establishment of a Corporation to be known as Kenya Railways, for the transfer to the Corporation of the undertakings of the East African Railways Corporation within Kenya, for the functions of the Corporation and for purposes connected therewith

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Kenya Railways Corporation Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“animals” means animate things of every kind except human beings;

“authorized employee” means an employee authorized by the managing director to exercise the powers or perform the duties in respect of which the expression is used;

“beacon” includes a light, mark or other structure erected by the Corporation for the purpose of navigation on inland waterways;

“booking office” means a place at which tickets may be obtained or charges paid to the Corporation;

“chairman” means the chairman of the Board appointed under section 4;

“charges” means all sums received or receivable, charged or chargeable, for, or in respect of, the carriage or warehousing of goods by the Corporation or for, or in respect of, any vessel or inland waterways port or any other service performed or facilities provided by the Corporation;

“consignee” means the person, firm or body to whom goods accepted for carriage by the Corporation 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 by the Corporation;

“consignor” means the person who has tendered goods which have been accepted for carriage by the Corporation;

“customs law” means any law in force imposing or relating to the collection of customs or excise duties or transfer tax;

“employee” means any person in the service of the Corporation;

“fare” includes all sums received or receivable, charged or chargeable, for the carriage of a passenger by the Corporation;

“ferry” means any vessel plying from one side of a waterway to the other for the purpose of the carriage of passengers or goods;

“firebreak” means any 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 thirty feet (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 managing director and the owner or occupier of the land contiguous to any land occupied by the Corporation on which a railway is constructed;

“free pass” means an authority in writing for the carriage by the Corporation without the payment of any fare of any person as a passenger;

“goods” includes luggage, animals (whether alive or dead) and all other movable property of any description;

“inland waterways ports” means the ports specified in the Third Schedule. Third Schedule.

“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;

“managing director” means the managing director of the Corporation appointed under section 5;

“master”, in relation to a vessel, means any person having charge of that vessel;

“perishable goods” means goods liable to rapid deterioration and includes fish, fruit, vegetables, potatoes, plants, bread, meat, game, butter, eggs, milk, cheese, birds, poultry, small animals, and any other thing which the managing director may by notice in the Gazette declare to be perishable goods.

“the purposes of the Corporation” means any purposes necessary or desirable for the performance of the services, or the provision of any facilities, which the Corporation is authorized to perform under this Act;

“railway” means the whole or any portion of the lines of railway operated by the Corporation and all other movable immovable property used, or placed at the disposal of the Corporation for use, in connection therewith;

“railway station” includes a road service station operated by the Corporation to serve the railway;

“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 Corporation or for, or in respect of, any vessel or inland waterways port or any other service performed or facility provided by the Corporation;

“season ticket” means a ticket entitling the person to whom it is issued to be carried by the Corporation 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 prepared and published in accordance with section 51;

“ticket” includes a single ticket, a return ticket, a season ticket, and any other written authority (not a free pass) for the carriage of a person by the Corporation as a passenger;

“trains” includes locomotive engines, tenders, motors, coaches, wagons, trolleys and rolling stock of all kinds used, whether separately or in conjunction, on a railway;

“vehicle” means any vehicle other than a train or vessel;

“warehouse” includes any building, place, wagon, vessel or vehicle when used by the Corporation 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 Corporation for carriage until the expiration of twenty-four hours after the goods have arrived at the place to which, in respect of their carriage by the Corporation, the goods have been consigned, and thereafter the goods shall, so long as they remain in the custody of the Corporation, be deemed to be in such custody otherwise than for the purpose of carriage:

Provided that—

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

of twenty-four hours after the time of their arrival at the railway station or inland waterways port from which the delivery service is operated, whichever is the earlier.

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

- (a) “premises occupied by the Corporation” means premises vested in or placed at the disposal of the Corporation for the purpose of the Corporation;
- (b) “property of the Corporation” means property vested in the Corporation for the purpose of the Corporation;
- (c) “the possession of the Corporation” means the possession by any employee in the course of his duty;
- (d) “carried by the Corporation” means carried by the Corporation in accordance with the provisions of this Act;
- (e) “accepted by the Corporation” means accepted by an employee or agent of the Corporation for carriage or warehousing by the Corporation in accordance with the provisions of this Act:

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

- (f) “services or facilities provided by the Corporation” means services performed or facilities provided by the Corporation in accordance with the provisions of this Act;
- (g) “operated by the Corporation” means operated by the Corporation in accordance with the provisions in this Act;
- (h) “vessel or vehicle of the Corporation” includes a vessel or vehicle operated on behalf of the Corporation.

PART II—ESTABLISHMENT OF THE CORPORATION

Incorporation of
Kenya Railways.

3. (1) There shall be established a Corporation to be known as Kenya Railways, in this Act referred to as the Corporation.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued

in its corporate name and to acquire, hold and dispose of movable and immovable property for the purposes of the Corporation.

(3) The headquarters of the Corporation shall be at Nairobi.

PART III—MANAGEMENT OF THE CORPORATION

4. There shall be a board of directors of the Corporation in this Act referred to as the Board, which shall consist of— Board of Directors.
11 of 1993.

- (a) a chairman of the Board appointed by the Minister;
- (b) the managing director;
- (c) the Permanent Secretary of the Ministry for the time being responsible for railways;
- (d) the Permanent Secretary to the Treasury;
- (e) the managing director of the Kenya Ports Authority;
- (f) not more than six persons, not being public officers or employees of the Corporation, to be appointed by the Minister by virtue of their knowledge of and experience in railways or transport matters or in commerce, industry, finance or administration generally.

5. (1) There shall be a managing director of the Corporation who shall be appointed by the Minister after consultation with the Board and whose terms and conditions of service shall be determined by the Minister in the instrument of appointment or otherwise in writing from time to time. Managing director,
deputy and secretary.

(2) The Board shall appoint a deputy managing director and a secretary of the Corporation whose terms and conditions of service shall be determined under sections 79 and 81.

6. The First Schedule shall have effect with respect to the constitution or organization of the Board and otherwise in relation thereto. Further provisions.

7. The Corporation shall pay to the directors such remuneration, fees or allowances for expenses as may be determined by the Minister: Remuneration of
directors.

Provided that no remuneration, fees or allowances for expenses shall be paid to any director who is a public officer in receipt of a salary.

PART IV—FUNCTIONS AND POWERS OF THE CORPORATION

General duty of the Board.
5 of 2005, s.2.

8. (1) It shall be the duty of the Board to provide, a co-ordinated and integrated system within Kenya of—

- (a) rail and inland waterways transport services;
- (b) port facilities in relation to inland waterways transport services; and
- (c) auxiliary road services in connection therewith.

(2) The performance of the duty referred to in subsection (1) shall include a general duty to secure—

- (a) the fullest development, consistent with economy, of the undertaking of the Corporation;
- (b) that the undertaking of the Corporation is operated efficiently, economically and with due regard to safety;
- (c) that the financial administration of the Corporation is conducted in accordance with Part V;
- (d) that the Corporation provides all reasonable facilities for the carriage of passengers and goods; and
- (e) that no particular person or body is given undue preference or subjected to any undue disadvantage.

Management.

9. Subject to this Act, the control and executive management of the Corporation shall be vested in the managing director.

Powers of the managing director.

10. Subject to the directions of the Board, the managing director may—

- (a) establish and operate rail, road and inland waterways transport services and facilities relating thereto;
- (b) approve recurrent expenditure within limits determined by the Board;
- (c) approve any individual capital work of which the estimated cost does not exceed four hundred thousand shillings or such other sum as the Minister may, from time to time, by order, determine;

- (d) approve any alteration in salaries, wages or other terms and conditions of service of employees of the Corporation not involving expenditure in excess of the limits determined by the Board within its powers under paragraph (b) of section 11;
- (e) approve any alteration in the establishment of the Corporation other than an alteration involving a major reorganization or a substantial reduction in the number of employees; and
- (f) allocate functions to employees.

11. In the exercise of its duty under section 8, and subject to any directions of a general nature which may be given to it by the Minister and to any agreement which may be subsisting entered into pursuant to section 11A, the Board may—

Powers of the Board.
5 of 2005, s. 3.

- (a) approve any minor alteration in tariffs, rates, fares and other charges;
- (b) approve any minor alteration in salaries, wages or other terms and conditions of service of employees of the Corporation;
- (c) approve any individual capital work for the purpose of the Corporation, not included within a programme of works approved by the Minister, of which the estimated cost does not exceed five million shillings or such other sum as the Minister may, from time to time, by order, determine;
- (d) establish, from among its members, committees for the purpose of the Corporation and delegate functions thereto;
- (e) consider legislative proposals and recommend their enactment to the Minister;
- (f) approve any alteration in organization or establishment of the Corporation other than an alteration referred to in section 10 (e); and
- (g) give directions to the managing director.

11A. (1) Notwithstanding any other provision of this Act, the Board may enter into an agreement with a person appointed in accordance with this section, for the performance of any of its functions or the exercise of any of its powers under this Act by that person.

Concessioning of the
railways.
5 of 2005, s. 4.

(2) An agreement under subsection (1) may take the form of a concession, lease or management contract.

(3) The Board shall appoint the person for the purposes of an agreement under this section (hereafter referred to as “the appointed person”) through competitive tendering in accordance with the law for the time being applicable to the procurement of public services.

(4) An agreement under this section shall—

- (a) be subject to the approval of the Minister;
- (b) specify the functions or powers of the Board to be performed or exercised, as the case may be, by the appointed person and those to remain the responsibility of the Board during the term of the agreement;
- (c) set out the terms and conditions applicable to the transfer of any of the employees of the Corporation recruited by the appointed person for the purposes of the agreement; and
- (d) without prejudice to the generality of paragraph (b), provide for the operation, maintenance, rehabilitation and development of the railway and associated infrastructure of the Corporation.

(5) Where a function or power of the Board is conferred on the appointed person by virtue of an agreement under this section, the performance of the function or the exercise of the power by that person shall be deemed to be under the authority of this Act.

12. The Minister may subject to any agreement entered into pursuant to section 11A—

- (a) give directions of a general nature to the Board relating to the operation of the undertaking of the Corporation;
- (b) in consultation with the Minister responsible for finance, approve any major alteration in the tariffs, rates, fares and other charges made for the services provided by the Corporation;
- (c) approve any major alteration in salaries, wages or other terms and conditions of service of employees;
- (d) in consultation with the Minister responsible for finance,

approve any individual capital work, for the purposes of the Corporation, of which the estimated cost exceeds five million shillings;

- (e) give particular directions to the Board concerning any matter involving agreement with, or the interest of, any other country or territory;
- (f) determine the limits of minor alterations for the purposes of paragraphs (a) and (b) of section 11.

13. (1) Without prejudice to section 11A, the Corporation shall have power to—

Powers of the Corporation as a statutory body. 5 of 2005, s. 6.

- (a) to carry goods and passengers by rail, road and inland waterways within Kenya;
- (b) to provide and use upon the inland waterways within and contiguous to Kenya vessels—
 - (i) for the towage, protection or salvage of life and property;
 - (ii) for the carriage of goods and passengers;
- (c) to store goods within Kenya, whether or not such goods have been, or are to be, carried by the Corporation;
- (d) to consign goods on behalf of other persons from any place within Kenya to any other place whether within Kenya or elsewhere;
- (e) to provide within Kenya, both for the passengers carried by the Corporation and other persons, hotels, other living accommodation and places of refreshment;
- (f) to provide within Kenya such other amenities or facilities for passengers carried by the Corporation and other persons making use of the services performed or the facilities provided by the Corporation as may appear to the Board necessary or desirable.

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

-
- (a) to construct or improve any railway, inland waterways port, ferry, road, bridge, building or any other necessary or desirable works required for the purposes of the Corporation;
 - (b) to operate trains and to acquire, construct, manufacture, maintain or repair anything required for the purposes of the Corporation;
 - (c) to carry on any business necessary or desirable to be carried on for the purposes of the Corporation and to act as agent for any services of the Government in the provision of any agreed function;
 - (d) to acquire, construct, manufacture, maintain or repair waterways or electric generating plant or any other works, plant or apparatus necessary or desirable for the supply or transmission of water or of electric energy for the purposes of the Corporation and to supply any such water or electric energy to any person;
 - (e) subject to the approval of the Minister in charge thereof, 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 Corporation;
 - (f) to determine, impose and levy rates, fares, charges, dues or fees for any service performed by the Corporation or for the use by any person of the facilities provided by the Corporation or for the grant to any person of any licence, permit or certificate;
 - (g) to prohibit, control or regulate—
 - (i) the use by any person of the services performed, or the facilities provided, by the Corporation;
 - (ii) the presence of any person, vessel, vehicle or goods within any inland waterways port or on any premises occupied by the Corporation for the purposes of the Corporation;
 - (h) to sell, let or otherwise dispose of any property, movable or immovable, which in the opinion of the Board is not necessary for the purposes of the Corporation:

Provided that the Corporation shall not sell, let or otherwise dispose of any building or land placed at its disposal by the Government otherwise than with the consent of, and on conditions agreed by, the Government;

- (i) to provide houses and other accommodation for employees;
- (j) to act as agent for any person engaged, whether within Kenya or elsewhere, in the performance of the services or the provision of facilities of a kind similar, or complementary to, those performed or provided by the Corporation;
- (k) to enter into agreements 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 Corporation;
 - (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 Corporation;
 - (iii) for the payment, collection or apportionment of any fares, rates, charges or other receipts arising out of the performance or the provision by that person of any such services or facilities and, for such purposes, to finance or assist in financing the activities of the person, whether by way of loan, the holding of stocks, shares or securities, the guaranteeing of interest or the retention of any stocks, shares or securities or otherwise;
- (l) to enter into an agreement with any person carrying on business as a carrier of passengers or goods, whether within Kenya or elsewhere, providing for the carriage of passengers or goods, by or on behalf of the Corporation, and of that person, under one contract or at a through fare or rate;
- (m) to hold shares in any company or other body and to establish or acquire any subsidiary company; and
- (n) to enter into any arrangement with the Kenya Ports Authority which, in the opinion of the Board, will promote or secure the provision, or improved provision, of any service or facilities which they may separately provide and without prejudice to the generality thereof any such arrangement or agreement may include provisions relating to—

- (i) the use by either party of the facilities or equipment maintained by the other;
- (ii) the temporary employment of staff of one party by the other on secondment or otherwise;
- (iii) the charges made in respect of the use of any service or facility to which the arrangement or agreement relates;
- (iv) the financing of any project by either or both parties;
- (v) research connected with any existing service or facility provided by either party or in relation to any service or facility under consideration; and
- (vi) the joinder in the arrangement or agreement by any other person.

(3) For the avoidance of doubt it is hereby declared that subsections (1) and (2) relate only to the capacity of the Corporation as a statutory corporation and nothing in those provisions shall be construed as authorizing the disregard by the Corporation of any law.

(4) The powers conferred on the Corporation under this section to construct or execute any work shall empower the construction or execution of such works on land vested in the Corporation or on land placed at its disposal by the Government for the purposes of the Corporation or, in the case of land not so vested in, or placed at the disposal of, the Corporation, 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 Corporation for the purposes of the Corporation, the Corporation shall proceed in accordance with section 14.

Acquisition of land for the purposes of the Corporation.

14. (1) Where land is required by the Corporation for the purposes of the Corporation, it may either-

- (a) if such land is not public land, acquire such land through negotiation and agreement with the registered owner thereof;

Provided that, notwithstanding the provisions of section 6 of the Land Control Act, the ensuing transaction shall not require the consent of a land control board if the land to be acquired is agricultural land; or

(b) if such land is public land, or if the Corporation is unable to acquire it by agreement in accordance with paragraph (a), notify the Minister responsible for public lands that the land specified in the notice is required for the purposes of the Corporation.

(2) When notice has been given under subsection (1) (b), then—

(a) if the land is public land, the Minister responsible for lands may, in his discretion and upon such terms and conditions as he may think fit, place such land at the disposal of the Corporation for the purposes of the Corporation;

(b) if the land is not public land, any provision in any written law which empowers the President or the Minister responsible for lands to acquire or direct the acquisition of such land for any specific purpose shall be deemed to include a power enabling the President or the Minister responsible for lands to acquire or direct the acquisition of such land for the purposes of the Corporation.

(3) Where any compensation is payable to any person in respect of any land specified in the notice given under subsection (1) (b) acquired by the President or the Minister responsible for lands, and such land after being so acquired is placed at the disposal of the Corporation in accordance with subsection (2) (a), the amount of the compensation payable to that person, in accordance with the provisions of the law under which the land was acquired, shall be paid by the Corporation.

(4) The Corporation may at any time convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender either for, or without, consideration:

Provided that land which was public land or trust land shall be surrendered to the Government and shall not be conveyed or transferred to any other person unless the Minister responsible for lands shall consent and so direct.

(5) The provisions of subsection (4) shall apply to land vested in the Corporation by any written law, including this Act, as well as to land conveyed to it or otherwise placed at its disposal.

(6) In this section—

“public land” means all public land in Kenya, excluding trust land, which is vested in the Government for public purposes or for the purposes of the Corporation or its predecessors in title, and for the purposes of the proviso to subsection (4) includes land previously so vested;

“trust land” means land which is or which was previously vested in a County Council by virtue of section 115 of the Constitution or any previous written law.

Power to enter land to survey, etc.

15. (1) Any authorized employee of the Corporation may, for the purposes of the Corporation, enter upon—

- (a) any land and survey such land or any portion thereof;
- (b) any land contiguous to any land occupied by the Corporation 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 such land.

(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 compensation therefor in accordance with this Act.

Power to enter land to prevent accidents, etc.

16. (1) The Corporation, or 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 Corporation or repairing any damage caused by any accident, enter upon any land and—

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

(2) If any tree or other obstruction cut down or removed under subsection (1) (a) came into existence subsequent to the transport services being provided at that place then no compensation shall be payable in respect of such entry or the cutting down or removal of such tree or other obstruction.

(3) Where any person erects any building which obscures the view of a fixed signal or is likely to cause any obstruction or any danger to any rail or transport service provided by the Corporation, the Corporation may, unless such person has previously obtained the approval of the managing director to the erection of such building or has modified it to the satisfaction of the managing director, apply to a judge of the High Court for an order for the demolition or modification of the building or, as the case may require, for the payment to the Corporation of the cost incurred in resiting or replacing any signalling or other equipment which is necessary to prevent such obstruction or danger and the court, at its discretion, may grant such order and may make such order as to the payment of compensation and costs as it thinks fit.

17. (1) Subject to this section the Corporation, or any authorized employee may, for the purposes of the Corporation, 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.

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

(2) Where the Corporation intends to exercise 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) the authority or person may authorize a representative to superintend such work and may require the Corporation to execute such work to the satisfaction of such representative;
- (b) the Corporation shall make arrangements for the maintenance of the supply of gas, oil, water, compressed air or electricity, for the continuance of the telephone or telegraph 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 compensation therefor in accordance with this Act.

(4) This section shall not apply to any oil pipeline owned or operated by the Kenya Pipeline Company Limited.

18. The Corporation may, for its purposes, take any water from any natural watercourse subject—

Power to take water.

- (a) if there is any law regulating the taking of any such water, to the provisions of that law;

- (b) if there is no such law, to the approval of the Minister responsible for water development.

Provision of transport services, etc., other than by the Corporation.
5 of 2005, s. 7.

19. Except with the consent of the Minister and subject to the right of the Government to provide and operate transport services, other than the carriage of passengers or goods for hire or reward, for its own purposes—

- (a) no rail transport services shall be provided; and
(b) no railway shall be constructed for the carriage thereon of goods or passengers for reward,

within Kenya by any person other than the Corporation or a person appointed in accordance with section 11A or, to the extent permitted by law, the Kenya Ports Authority.

Accommodation works.

20. Where, in the exercise of powers under this Act, the Corporation 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 Board, are necessary for the purpose of making good any interruption caused by the construction of the railway to the use of the lands through which the railway is constructed;
- (b) such culverts, drains or other works as, in the opinion of the Board, are necessary to convey water as freely as is practicable from or to such adjoining lands as before the construction of the railway:

Provided that—

- (i) nothing in this section shall require the construction or the maintenance of any accommodation works-
- (a) in such a manner as to prevent or obstruct the proper operation of the railway;
- (b) 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

(c) 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; and

(ii) where suitable accommodation works for the crossing of roads or watercourses have been constructed under this section and such road or watercourse is afterwards diverted by some person other than the Corporation, then, the Corporation shall not be required to construct other accommodation works for the crossing of the road or watercourse.

21. If at any time—

(a) the owner or occupier of any lands on which a railway is constructed desires any accommodation works in addition to those, if any, constructed by the Corporation under section 20; or

(b) any authority proposes to construct a public road or any other works across a railway, then the owner, occupier or authority, as the case may be, may require the Corporation to construct such accommodation works—

(i) as may be agreed between the Corporation and the owner, occupier or authority; or

(ii) if no such agreement is reached, as may be determined by the Minister,

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

22. (1) Where, in the exercise of powers under this Act, the Corporation proposes to construct a railway across a public road, the Minister responsible for public lands may, subject to subsection (3), require the Corporation 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 Corporation shall comply with such requirements.

Additional accommodation works.

Construction of railway crossing public road.

(2) Where any railway has been constructed so as to cross a public road on the level, the Minister responsible for public lands may, subject to subsection (3), require the Corporation—

(a) to erect such gates; 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 Corporation shall comply with such requirements.

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

(4) Where, as a result of a requirement made by the Minister responsible for public lands under this section, any works are to be constructed by the Corporation, 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 Corporation 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.

Certification of a new railway.

23. (1) Before any section of a new railway is declared open for the public carriage of passengers or goods, the chief engineer of the Corporation or such other qualified person as the managing director may appoint in that behalf shall furnish a certificate that such section complies with the standards laid down by the Corporation and may, in the opinion of such engineer or other person, be opened for the public carriage of passengers or goods without danger to the public; and upon such certificate being furnished, the Corporation may by notice in the Gazette declare the section to which the certificate refers to be open for such purposes.

(2) Nothing in subsection (1) shall prohibit the Corporation from carrying passengers or goods on a railway in the course of construction or before it has been so declared open but, in such case, the Corporation shall not be liable for the death of, or injury to, any passenger or for the loss of, or damage to, any goods occasioned in the course of such carriage.

(3) For the purpose of this section, the expression “new railway” does not include any diversion or re-alignment of track made to any existing railway.

PART V—FINANCIAL PROVISIONS

24. (1) It shall be the duty of the Corporation to conduct its business according to commercial principles and to perform its functions in such a manner as to secure that, taking one year with another, its gross 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 provisions in respect of depreciation of capital assets, pension liabilities, and interest and other provision for the repayments 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 Corporation of such a percentage as the Minister may direct from time to time.

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 adequate provision for maintenance and depreciation but excluding interest and other charges on debt;
- (b) “value of the net fixed assets in operation” shall be the gross value of those assets less the amount of accumulated depreciation shown in the statement of accounts of the Corporation:

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

(3) In the exercise of its duty under subsection (1), the Corporation may, subject to any directions of a general nature which may be given to the Board by the Minister responsible for finance, invest moneys standing to the credit of the Corporation in such securities as the Board thinks fit.

(4) Notwithstanding the provisions of paragraph (e) of section 8 (2), so far as is not inconsistent with the provisions of this section or with the principles of prudent finance, the Minister may, from time to time, in consultation with the Board, make provision for cheap transport to be provided by the Corporation to assist agriculture, mining and industrial development in Kenya.

Borrowing powers.

25. (1) The Corporation may borrow money by the issue of loan stock on such terms as may be approved by the Minister responsible for finance.

(2) The Corporation may otherwise borrow money or obtain credit in Kenya or abroad for the purposes of the Corporation with the concurrence of, and subject to such limitations as may be imposed by, the Minister responsible for finance.

(3) Such stock issued under the provisions of subsection (1) and such moneys borrowed or credit obtained under the provisions of subsection (2) as the Minister responsible for finance shall approve for the purposes of this subsection, and all interest and other charges payable in respect of such stock, moneys or credit, shall, unless the instrument or note evidencing or supporting such borrowing shall otherwise provide, be charged upon all the property, undertakings and revenue of the Corporation by operation of this section and without further charge or instrument.

(4) Any stock issued by the East African Railways Corporation which, by virtue of any order made under subsection (4) of section 95, becomes the liability of the Corporation shall, subject to the terms of such order, be deemed to be stock issued by the Corporation and shall be held in the same right and on the same trusts and subject to the same powers, privileges, provisions and charges as those in, on or subject to which such stock was issued.

(5) Except as provided in this section, the Corporation shall not give or execute any mortgage or charge over any of its property or assign its property by way of security for borrowed money.

PART VI—ACCOUNTS AND REPORTS

Annual accounts.
12 of 1985, Sch.

26. (1) The Board shall ensure that proper accounts and other records are kept in relation to the revenue and expenditure of the Corporation and shall ensure that, within six months of the end of each financial year of the Corporation or such longer period as Minister may allow in any particular case, a statement of accounts of the Corporation is prepared in accordance with the best commercial standards and any directions which may be issued by the Minister, and transmitted to the Auditor-General (Corporations).

(2) The accounts of the Corporation and of all officers and authorities of the Corporation shall be audited by the Auditor-General (Corporations) and for that purpose the Auditor-General (Corporation) or any person authorized by him in that behalf, whether or not a public officer, shall have access to all books, records, returns and other

documents relating to those accounts and upon receipt of a statement of accounts transmitted to him under subsection (1), the Auditor-General (Corporations) shall examine it, certify it and report on it and shall return the statement with his certificate and report to the Board within sufficient time to enable compliance with subsection (3).

(3) Upon the return of the statement of accounts certified by the Auditor-General (Corporations) and the receipt of his report thereon, the Board shall immediately transmit that statement of accounts and report to the Minister who shall cause the same to be presented to Parliament without delay and in any event before the expiry of nine months from the end of the financial year to which they relate or such longer period as the Minister may in any particular case allow.

27. (1) The Board shall, within nine months after the end of each financial year, prepare a report upon the operation of the Corporation during that year and shall transmit such report to the Minister who shall cause the same to be presented to Parliament together with the statement of accounts and report of the Auditor-General (Corporations) referred to in section 26.

Annual report and financial year.

(2) The financial year of the Corporation shall run from the 1st January to the 31st December in each year.

PART VII—RESPONSIBILITY OF THE CORPORATION AS A CARRIER
AND WAREHOUSEMAN

RESPONSIBILITY AS A CARRIER

Passengers

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

Liability for loss of life, etc., of passengers.

Provided that nothing herein shall impose upon the Corporation any liability from which it is exempt under this Act or any other written law.

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

(a) who is travelling, whether with or without permission, in any part of a train, vessel or vehicle other than part normally provided for the use of passengers while travelling;

(b) who is travelling on a free pass;

- (c) who is travelling over a railway in the course of construction whether with or without permission;
- (d) who, at the time the loss of life or injury occurred, is being carried by any transport service other than one provided by the Corporation or under the control of the Board,

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

(3) The Corporation shall not be liable for the loss of life of, or for personal injury to, any passenger who is carried by the Corporation solely by vessel, or partly by train and vehicle and partly by vessel, when the loss of life or injury occurs during the carriage by vessel and arises from—

- (a) act of God;
- (b) act of war;
- (c) fire or accident from machinery, boilers or steam;
- (d) any peril or accident of the inland waterways, or navigation, of whatsoever nature or kind and from whatsoever cause arising,

but subject thereto and to any conditions expressed in the contract of carriage, the Corporation shall be liable for the loss of life or personal injury which occurs during the carriage by vessel, to the extent to which, as owner of such vessel, it would be liable under any law for the time being in force relating to merchant shipping (or to the limitation of liability for loss of life or personal injury upon a vessel in inland waterways) as if the vessel were subject to the provisions of such law and not to any greater extent; and where the Corporation seeks to avoid liability under this subsection, the burden of proving that any such loss of life or injury occurred during the carriage by vessel shall be upon the Corporation:

Provided that nothing in this subsection shall impose upon the Corporation any liability from which it is exempted under this Act or any other written law.

(4) For the purposes of this section the expression “passenger” includes every person, other than an employee on duty, lawfully travelling on any train, vessel or vehicle of the Corporation.

29. The Corporation shall not be liable for any loss arising from the delay to any passenger caused—

No Liability for delay in arrival of passengers, etc.

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

from whatever cause arising.

Goods

30. (1) Subject to this Act, the Corporation 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 Corporation proves that such loss, misdelivery or damage, arose from—

Liability for loss of goods.

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

Provided that where the loss, misdelivery or damage occurs in any of the cases specified in this subsection due to the failure of the Corporation, or of any employee, to use reasonable foresight and care in the carriage of goods, the Corporation shall not be relieved from liability for such loss, misdelivery or damage.

(2) The Corporation 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 section 46 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.

(3) The Corporation 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 Corporation has been given;
- (c) which at the time the loss, misdelivery or damage occurred are being carried by any transport service other than one provided by the Corporation or under the control of the Corporation;
- (d) where there is a loss of a particular market whether held daily or at intervals; or
- (e) where the loss, misdelivery or damage arises from insufficient or improper packing or from riots, civil commotion, strikes, lock-outs, stoppage or restraint of labour from whatsoever cause whether partial or general, and

nothing in subsection (1) shall impose on the Corporation any liability from which it is exempted under this Act or any other written law.

(4) The Corporation shall not be liable for loss of, or damage to, goods carried by the Corporation solely by vessel, or partly by train and vehicle and partly by vessel, when the loss of, or damage to, goods carried by the Corporation occurs during the carriage by vessel and arises from—

- (a) act of God;
- (b) act of war;
- (c) fire or accident from machinery, boilers or steam;
- (d) any peril or accident of the inland waterways, or navigation, of whatsoever nature or kind and from whatsoever cause arising,

but subject thereto, and to any conditions expressed in contract of carriage, the Corporation shall be liable for any such loss or damage which occurs during the carriage by vessel to the extent to which, as owner of such vessel, it would be liable under any law for the time being in force relating to merchant shipping (or to the limitation of liability for loss, or damage to, goods upon a vessel in inland waterways) as if the vessel were subject to the provisions of such law and not to any greater

extent; and where the Corporation seeks to avoid liability under this subsection, the burden of proving that any such loss or damage occurred during the carriage by vessel shall be upon the Corporation:

Provided that nothing in this subsection shall impose upon the Corporation any liability from which it is exempted under this Act or any other written law.

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

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

- (a) where there has been fraud on the part of the consignor;
- (b) unless a document acknowledging the receipt of such goods for carriage by the Corporation has been given;
- (c) which at the time the delay, detention or deviation occurred are being carried by any transport service other than one provided by the Corporation or under the control of the Corporation;
- (d) where there is a loss of a particular market whether held daily or at intervals; or
- (e) where the delay, detention or deviation arises from insufficient packing or address, riots, civil commotions, strikes, lock-outs, stoppage or restraints of labour from whatsoever cause whether partial or general.

32. (1) The liability of the Corporation 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 the animal by the Corporation 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 determined in the Tariff Book in respect of such excess value, and thereupon the liability of the Corporation shall not in any case exceed the declared value. Limitation of liability for animals.

(2) In every proceeding against the Corporation 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.

Limitation of liability for loss, etc., of specific articles. Second Schedule.

33. (1) The liability of the Corporation in respect of any article or articles 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 the parcel or package by the Corporation for carriage the consignor or his agent declared that the value of the article or articles exceeded one thousand shillings and paid, or agreed to pay, such additional charges as may be determined in the Tariff Book in respect of such excess value; and thereupon the liability of the Corporation shall not in any case exceed the declared value.

(2) It shall be a condition of the carriage of any parcel or package containing any article or articles 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 any proceedings against the Corporation for the recovery of any sum in respect of any article or articles the value of which has been declared to be in excess of one thousand shillings, the burden of proving the value of the article or articles and of any loss or damage thereto shall be upon the claimant.

(4) The Minister may, by regulations made under this Act, amend the Second Schedule or vary amount of the maximum liability of the Corporation as specified in this section.

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

34. The liability of the Corporation in respect of any goods carried by the Corporation in relation to which an account false in any material particular has been given under section 46 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 by contract.

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

Provided that nothing in this section shall apply to a contract for the carriage of goods by vessel.

(2) A contract purporting to limit the liability of the Corporation under this Act for the carriage of goods by the Corporation shall, to the extent to which it purports to limit such liability but not otherwise, be void unless it is in writing signed by or on behalf of the person delivering the goods to the Corporation.

RESPONSIBILITY AS A WAREHOUSEMAN

36. Subject to this Act, or any contract, the Corporation shall not be liable for the loss, misdelivery or detention of, or damage to, goods— Liability for loss of goods, etc.

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

except where the loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of the Corporation or of any employee:

Provided that—

- (i) the Corporation shall in no case be liable for the loss, misdelivery, detention or damage arising from—
 - (a) act of God;
 - (b) act of war;
 - (c) seizure under legal process;
 - (d) act or order of the Government;
 - (e) act or omission of the consignor, consignee, or depositor, or of the servant or agent of any such person;
 - (f) fire, flood, tempest, riots, civil commotions, strikes, lock-outs, stoppage or restraint of labour from whatever cause whether partial or general;
 - (g) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration;
 - (h) deficiency in the contents of unbroken packages;
or
 - (i) insufficient packing or leakage from defective drums, containers or packages; and

(ii) where the loss, misdelivery, detention or damage occurs—

(a) in relation to goods accepted by the Corporation for carriage otherwise than while the goods are in transit, the limitation of the liability of the Corporation contained in sections 32, 33 and 34, or limited by any contract under section 35, shall continue to apply;

(b) in relation to goods accepted by the Corporation for warehousing, the limitation of the liability of the Corporation contained in section 34 shall apply.

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

37. (1) The liability of the Corporation 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 two hundred 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 determined in the Tariff Book in respect of such excess value; and thereupon the liability of the Corporation shall not in any case exceed the declared value.

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

PART VIII—OPERATIONS OF THE CORPORATION

Passengers and Luggage

Corporation may determine.

38. (1) The Corporation may subject to this Act—

(a) determine the conditions upon which passengers and luggage shall be carried by the Corporation and different conditions may be determined in different cases; and such conditions shall be published in the Tariff Book and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein;

(b) determine the rates, fares and charges for the carriage of passengers and luggage by the Corporation and such rates, fares and 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:

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, vessels or vehicles of the Corporation.

(2) Notwithstanding subsection (1), the Corporation may in relation to the special circumstances of any particular case, determine conditions, rates, fares and charges applicable to such case for the carriage of passengers and luggage by the Corporation and such conditions, rates, fares and charges shall have immediate effect in relation to such case:

Provided that—

- (i) such conditions, rates, fares and charges shall as soon as practicable after such determination be published in the Tariff Book; and
- (ii) the determination of such conditions, rates, fares and charges shall not of itself constitute an undue preference under paragraph (e) of section 8 (2).

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

General right of persons 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 liquor,

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

General conditions on which tickets, etc., issued.

40. (1) Every ticket and free pass shall be issued by the Corporation subject to the provisions of this Act and, in addition to any other conditions, to the condition that—

- (a) there is room available in the train, vessel 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 or cabin to another of the same class for the purpose of the better use of the accommodation of the train or vessel; 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 the ticket or pass to the employee—
 - (i) in the case of a ticket or free pass issued for a particular journey, at or near the end of the journey;
 - (ii) in the case of a season ticket or free pass, at the expiration of the period for which it was issued.

(2) If no 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 his returning the ticket to an authorized employee as soon as practicable; or
- (b) may elect, subject to there being available room to travel in a lower class and shall, upon drawing as soon as practicable the attention of an authorized employee to that 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 travelled:

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

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

41. No person shall be upon any train, vessel or vehicle of the Corporation for the purposes of travelling therein as a passenger unless he is in possession of a valid ticket or free pass; and any person found on a train, vessel 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 of the Corporation to leave the train, vessel

or vehicle and, if he does not do so, may be removed there from with such force as may be reasonable and necessary in the circumstances.

42. (1) Any person who—

(a) travels on any train, vessel or vehicle of the Corporation without a valid ticket or free pass; or

(b) being in, or having come from, a train, vessel 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 the Corporation may determine and publish in the Tariff Book; and for the purpose of ascertaining such fare it shall be presumed that such person has travelled from the station or inland waterways port—

(i) from which the train, vessel or vehicle originally started; or

(ii) if the tickets or free passes of passengers have been examined during the journey and found to be in order, from the place where they were last examined and found in order, unless he satisfies such authorized employee to the contrary.

(2) Any person who—

(a) travels in a class of a train, vessel or vehicle higher than that for which he is in possession of a valid ticket or free pass; or

(b) travels in a train, vessel 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 the Corporation may determine and publish 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 for belief that there would be difficulty or delay in bringing such person before the court by any other means, arrest and detain that

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

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.

Conditions of carriage of luggage.

43. (1) Subject to 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 Corporation in the appropriate part of the train, vessel or vehicle and to receive a document of receipt for each piece of luggage so delivered.

(2) Luggage shall be carried by the Corporation subject to the provisions of this Act, and, in addition to any other conditions—

- (a) to the condition that unless the luggage is delivered to an employee for carriage in accordance with subsection (1), it shall be carried at the risk of the passenger; and
- (b) to the condition that 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.

Goods

Corporation may determine conditions for carriage of goods, etc.

44. (1) The Corporation may, subject to this Act, determine the conditions upon which goods shall be carried or warehoused by the Corporation 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.

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

Provided that—

- (i) such conditions, rates and charges shall, if they are of a continuing nature, be available to the public on request; and
- (ii) the determination of such conditions, rates and charges shall not of itself constitute an undue preference under paragraph (e) of section 8 (2).

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

General right to have goods carried.

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 50 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 insufficiently or improperly 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 Corporation save, when such goods are accepted for carriage, under and in accordance with any special provisions dealing with the carriage of such goods.

46. (1) The consignor of, or the person tendering, any goods to the Corporation 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 Corporation, shall deliver to an authorized employee an account in writing signed by the 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 Corporation.

Description, etc., of goods to be delivered.

(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 Corporation 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 Corporation, refuse to deliver such goods unless in respect thereof a rate or charge not exceeding such highest rate or charge is paid.

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

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

47. (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 Corporation 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 the rate or charge due or if they have been removed from the possession of the Corporation, any other goods of such person which may be in, or may thereafter come into, the possession of the Corporation.

(2) Where any goods have been detained under subsection (1), the Corporation 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 and all 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 expiration 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 the customs laws.

(3) The Corporation may, out of the proceeds of any sale effected under subsection (2), retain a sum equal to the fare, rate or charge due and 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 managing director 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 Corporation may sell such goods and dispose of the proceeds of such sale in accordance with provisions of this section.

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

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

Unclaimed goods
in possession of the
Corporation.

(2) If—

- (a) the owner of any goods in the possession of the Corporation is not known and 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 a non-compliance with the provisions of any notice served under subsection (1),

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

Indemnity where goods claimed by two persons, etc.

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 the customs laws.

49. Where—

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

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

Dangerous or offensive goods, etc.

50. (1) No person shall take with him upon any train, vessel or vehicle of the Corporation or tender to the Corporation for carriage or warehousing any dangerous or offensive goods or any goods which are likely to cause damage to any persons or property without giving notice of the nature of the goods—

- (a) in the case of goods taken by a person, to the employee in charge of the station or inland waterways port at which that person commences his journey; or
- (b) in the case of goods tendered to the Corporation for carriage or warehousing, to the employee to whom the 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, vessel or vehicle of the Corporation;
- (b) refuse to accept the goods for carriage or warehousing or accept them only under, and in accordance with, any special provisions dealing with the carriage or warehousing of any such goods;
- (c) require the goods to be marked and packed in such manner as he may reasonably direct.

(3) Where an 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 subsection (1) or (2) he may examine the goods and if, on examination, they are found to be goods to which this section applies he may order their removal from any train, vessel or vehicle of, or from premises occupied by, the Corporation.

(4) Nothing in this section shall—

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

General

51. (1) The Corporation shall cause to be prepared and published in such manner as it may think fit—

Corporation to prepare Tariff Book, etc.

- (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 Corporation and such other matters as the Corporation may think fit;
- (b) such other books, time-tables and documents as under this Act are required to be kept.

(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 Corporation 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 Corporation.

Corporation shall determine maximum load, etc.

52. (1) The Corporation shall determine—

- (a) the maximum load for every wagon of the Corporation and no wagon shall, except with the permission of the managing director, 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 cabin of a vessel or in a passenger lighter of the Corporation.

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

Accidents

Accidents to be reported.

53. Where any accident occurs in any transport service of the Corporation (other than a road transport service) or in any inland waterways port then if that accident—

- (a) is attended, or is of a kind usually attended, with loss of human life or with serious injury to any person or property; or
- (b) involves any collision between trains or between vessels, of which one is a train or vessel, as the case may be, carrying passengers; or
- (c) involves the derailment of any train, or any part thereof, carrying passengers; or
- (d) is of such other kind as the Minister may specify in directions given to then managing director,

the managing director shall, as soon as practicable, give notice of the occurrence of such accident to the Board and, in the case of any such accident involving injury to any person, also to the police station or administrative authority nearest to the scene of such accident.

The Board may order inquiry, etc.

54. (1) The Board may order such inquiry into any accident which occurs in any transport services of the Corporation, or in any inland waterways, or as it may think fit.

(2) The Board shall submit to the Minister a report on any accident of a kind referred to in section 53 setting out *inter alia* the probable cause of such accident and the steps, if any, which have been taken, or it has directed shall be taken, with a view to avoiding a repetition thereof.

55. The managing director shall make to the Board a return, in such form and at such intervals as the Board may direct, of all accidents occurring to the transport services of the Corporation, or in any inland waterways port, whether or not the accident is attended with injury to any person.

Managing director to make a return of accidents.

**PART IX—SPECIAL PROVISIONS RELATING TO PORTS
IN INLAND WATERWAYS**

56. *(Repealed by 4 of 2009, s. 454).*

57. *(Repealed by 4 of 2009, s. 454).*

58. *(Repealed by 4 of 2009, s. 454).*

59. *(Repealed by 4 of 2009, s. 454).*

60. *(Repealed by 4 of 2009, s. 454).*

61. *(Repealed by 4 of 2009, s. 454).*

62. *(Repealed by 4 of 2009, s. 454).*

63. *(Repealed by 4 of 2009, s. 454).*

64. *(Repealed by 4 of 2009, s. 454).*

65. *(Repealed by 4 of 2009, s. 454).*

PART X—PROVISIONS RELATING TO OFFENCES

66. (1) Any person who unlawfully—

Major offences.

(a) does any act which obstructs, or might obstruct, the working of a train, vessel or vehicle of the Corporation and which endangers, or might endanger, the life of any person travelling thereon; or

(b) damages or in any way interferes with any train, vessel, vehicle, signal, points, rails, sleeper, lighthouse, buoy, mark, beacon or other property of the Corporation in such a manner as to endanger, or as might endanger, the life of any person,

shall be guilty of an offence and liable to imprisonment for a term not exceeding ten years.

(2) Without prejudice to the generality of subsection (1) any person who, being a member of the crew of a vessel operated by the Corporation and with prejudice to the safe operation of such vessel, without lawful excuse disobeys any lawful order given to him as a member of the crew, or, at an inland waterways port or other place, unlawfully deserts his employment upon such vessel shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.

Minor offences.

67. Any person who—

- (a) not being specifically authorized in that behalf or an employee, passenger or agent of the Corporation—
 - (i) is found during the hours of darkness on any premises occupied by the Corporation;
 - (ii) is found in any area designated by the Corporation as dangerous by the publication of a notice to that effect; or
 - (iii) refuses to leave premises occupied by the Corporation, or any train, vessel or vehicle thereof after being lawfully warned to do so by any employee or police officer;
- (b) being on any premises occupied by the Corporation or upon any train, vessel or vehicle of the Corporation—
 - (i) refuses when called upon by an employee or police officer to give his name and address or gives a false name or address for the purpose of avoiding prosecution;
 - (ii) is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of any other person;
 - (iii) discharges any firearm or does anything which may cause injury to any person on such premises or upon such train, vessel or vehicle;
 - (iv) commits any nuisance or act of indecency or uses profane, obscene, indecent or abusive language;
 - (v) without lawful excuse contravenes any direction lawfully given by any employee under this Act;
 - (vi) save with the express permission of the managing director 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, vessel or vehicle bearing a notice that smoking is not permitted in that part;

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- (c) writes, draws or affixes any profane, obscene, indecent or abusive word, matter, representation or character upon any premises occupied by the Corporation or upon any train, vessel or vehicle of the Corporation;
 - (d) defaces the writing on any board or any notice authorized to be maintained upon any premises occupied by the Corporation or upon any train, vessel or vehicle of the Corporation;
 - (e) damages or without lawful excuse interferes with any property of the Corporation;
 - (f) without lawful excuse does any act which obstructs, or is likely to obstruct, the free navigation of any inland waterways port or the use of any wharf or dock therein;
 - (g) without lawful excuse enters or leaves any train, vessel or vehicle of the Corporation while it is in motion or elsewhere than at the place appointed by the Corporation for passengers to enter or leave or opens any outer door of any train while it is in motion;
 - (h) being a driver or conductor of any vehicle, disobeys while upon premises occupied by the Corporation any reasonable directions given to him in respect of such vehicle by any police officer or, not being an employee of the Corporation, disobeys any such direction given by an authorized employee;
 - (i) in the absence of a gate-keeper, omits to shut and fasten, if any form of fastener is provided, any gate on any railway belonging to the Corporation as soon as such person and any animal, vehicle or other thing under his charge has passed through the gate;
 - (j) 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 or drives any animal, vehicle or other thing onto or across such railway;
 - (k) permits or allows any animal to stay on any premises occupied by the Corporation and properly fenced;
 - (l) 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, vessel or vehicle of the Corporation;

- (m) wilfully obstructs or impedes an employee of the Corporation in the discharge of his duties;
- (n) gives or offers to any employee any money or anything of value for the purpose of avoiding payment of any sum due to the Corporation;
- (o) unlawfully removes any property of the Corporation;
- (p) being an employee of the Corporation receives from any passenger or from any person delivering goods to the Corporation, any amount of money and—
 - (i) in the case of any amount of money received as a passenger fare, fails to issue a ticket immediately in respect of such amount of money; and
 - (ii) in any other case, fails within reasonable time not exceeding half an hour to issue a receipt in respect of such amount of money;
- (q) without the permission of an authorized employee travels in or upon any part of a train, vessel or vehicle of the Corporation other than the part ordinarily provided for passengers during travel; or
- (r) contravenes any direction given by a health officer under section 63 or refuses to answer any question put to him under the provisions of that section or gives in reply thereto any information which is false in a material particular,

shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Travelling without ticket, etc.

68. (1) Any person who—

- (a) travels on a train, vessel or vehicle of the Corporation without a valid ticket or free pass with intent to avoid payment of any fare for which he is liable;
- (b) having a valid ticket or free pass for a certain distance, knowingly travels on a train, vessel or vehicle of the Corporation beyond that distance with intent to avoid payment of the fare for the additional distance;

- (c) travels on a train, vessel or vehicle of the Corporation by a higher class than the valid ticket or free pass which he holds entitles him to travel with intent to avoid payment of any additional fare;
- (d) wilfully refuses to pay the fare and excess charge which, on demand, he is liable to pay under section 42; or
- (e) travels on a train, vessel or vehicle of the Corporation 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 liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both and, in addition, shall be liable to a penalty equal to the fare and excess charge for which he is liable under section 42 or, in the case of an offence against paragraph (e), equal to the single fare for the journey and in the class 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 Corporation.

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

69. Any person who, being a passenger on any train, vessel or vehicle of the Corporation—

Offences by passengers.

- (a) enters any part thereof reserved for 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;
- (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;
- (c) refuses or fails to obey the requirement of an authorized employee made under section 40;
- (d) knowingly enters or refuses to leave any part thereof not intended for the use of passengers;

- (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 class or sex,

shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Offences relating to tickets.

70. Any person who—

- (a) not being an authorized employee or agent of the Corporation, 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, vessel or vehicle;
- (b) purchases or obtains any ticket or free pass, or any portion thereof, from any person other than an authorized employee or agent of the Corporation; 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 liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Forgeries, etc., of tickets.

71. Any person who—

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

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years 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 42.

72. 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 Corporation under this Act shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment not exceeding three months or to both.

False returns.

73. (1) Any person, who in contravention of the provisions of section 50—

Unlawfully transporting dangerous goods.

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

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

(2) Any person who is convicted of an offence under this section shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so taken upon the train, vessel or vehicle or delivered to the Corporation 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.

74. Any master of a vessel who contravenes, or permits to be contravened, any of the provisions of sections 58, 59, 62 (1) (a) or 63 (1) or who produces any document or gives any information which is false in any material particular, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Offences by master of vessel.

75. Any employee of the Corporation who, while on duty, endangers the safety of any person—

Employee endangering safety of operation.

- (a) by contravening any of the provisions of this Act;
- (b) by contravening any lawful order, direction or rule given to such employee or made in respect of his service;
- (c) by being under the influence of alcohol or drugs; or
- (d) by any rash or negligent act,

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.

Employee demanding improper amount.

76. Any employee of the Corporation, who with intent to defraud, demands, solicits or receives from any passenger, or from any person delivering goods to the Corporation for carriage or warehousing or from any person making use of the facilities provided by the Corporation, any greater or lesser amount than he should demand or receive, or any other thing of value, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

Arrest of employee.

77. (1) Where the safe operation of any transport service of the Corporation would be endangered by the immediate arrest, whether with or without a warrant, of any employee thereof, the police officer whose duty it is to make the arrest shall—

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

(2) Where any request is made to a head of a department 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, removal and place of trial.

78. (1) Any person who commits any offence mentioned in sections 66, 67, 68, 69, 71 or 76 may be arrested without warrant by any authorized employee of the Corporation or police officer and shall thereupon, with the least possible delay, be taken before a magistrate having jurisdiction to try him or to 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 of the Corporation 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 incorrect,

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 sections 67, 68, 69 or 73 may be required by any authorized employee of the Corporation or police officer to leave the premises occupied by the Corporation or the train, vessel or vehicle, as the case may be, in which such person is at the time of the commission of the offence and to remove any goods therefrom; and if such person fails to comply with such requirement he or such goods may be removed therefrom with such force as may be reasonably necessary in the circumstances.

(4) Any person who, under this section, is arrested or required to leave any premises occupied by the Corporation or any train, vessel or vehicle thereof shall not be entitled to the return 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 incidental to, or consequential upon, the prosecution, trial or punishment thereof be deemed to have been committed in that place:

Provided that nothing herein contained shall preclude the prosecution, trial and punishment of such person in any place in which, but for the provisions of this section, such person might have been prosecuted, tried and punished.

PART XI—MISCELLANEOUS PROVISIONS

Staff

79. (1) Subject to this Act, the Board may appoint such employees as may be necessary for its efficient working under such terms and conditions, including conditions relating to discipline and dismissal, as it may think fit. Appointment of staff.

(2) The managing director may, by notice in writing, authorize any employee appointed under this section to maintain order upon any premises occupied by the Corporation or in any inland waterways port, train, vessel or vehicle of the Corporation and any employee so

authorized shall, in the performance of such duty, have all the powers, rights, privileges and protection of a police officer.

(3) Every person who is employed in the undertaking of the East African Railways Corporation and who becomes an employee of the Corporation under section 95 shall be deemed to have been appointed to the service of the Corporation in accordance with this section.

Property of the Corporation in custody of employee, etc.

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

(2) If any property or premises to which subsection (1) refers is not delivered to the Corporation or vacated, the managing director 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 Corporation 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 managing director may, without prejudice to any other means of recovery apply to a magistrate for an order empowering a police officer to enter and search any house or building where such property is believed to be and to deliver such property if found to the Corporation or, as the case may require, to evict from such premises any person found therein.

Regulations relating to staff.

81. Subject to this Act, the Minister may make regulations generally relating to the conditions of service of employees and, without prejudice to the generality of the foregoing, may make regulations relating to—

- (a) the grant of pensions, gratuities and other retiring allowances to employees and their dependants and the grant of gratuities to the estate or dependants of deceased employees;
- (b) the establishment and maintenance of sick funds, superannuation and provident funds and the contributions payable thereto and the benefits receivable therefrom;
- (c) the liability or otherwise to assignment, attachment, sequestration or other levy of sums payable to an employee or other persons under regulations made under this section.

Legal Provisions

82. (1) The Board and the managing director 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) Any act or decision, or notification thereof, of the Board or the managing director under this Act may be signified under the hand of an employee authorized for that purpose.

83. (1) In the exercise of the powers conferred by sections 13, 15, 16 and 17, the Corporation shall do as little damage as possible, and where any person suffers damage no action or suit shall lie but he shall be entitled to such compensation therefor as may be agreed between him and the Corporation or in default of agreement, as may be determined by a single arbitrator appointed by the Chief Justice. Compensation.

(2) Nothing in this section shall be construed as entitling any person to compensation—

- (a) for any damage suffered unless he would have been entitled thereto otherwise than under the provisions of this section; or
- (b) for any damage suffered as a result of the user of any works authorized under this Act unless such damage results from negligence in such user.

84. (1) The Corporation shall not be liable for any loss or damage caused by fire from any engine of the Corporation to any building, or any property therein, if any part of such building is within two hundred feet of the rails of any railway. Liability for damage caused by fire.

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

(3) Subject to subsection (1), the Corporation shall be liable for any loss or damage caused by fire from any engine of the Corporation 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 with land occupied by the Corporation; 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 Corporation, such owner or occupier had given notice in writing of such fact to the managing director 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 managing director—
 - (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 Corporation under the provisions of this subsection shall be two hundred thousand shillings.

Burden of proof.

85. In any proceedings against the Corporation for compensation under section 30, 31 or 36, it shall not be necessary for the person claiming compensation to prove how such loss, misdelivery, damage, detention, delay or deviation was caused.

Notice of claim

86. (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 Corporation for carriage or warehousing unless a claim in writing, giving such particulars as may reasonably be necessary, is given to the managing director within six months of the date upon which such goods were accepted by the Corporation.

(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 Corporation for carriage or warehousing unless—

- (a) the managing director is notified of such fact in writing within four days of the date upon which such goods were delivered, or offered by the Corporation for delivery to the consignee or person entitled to take delivery thereof; and

(b) a claim in writing, giving such particulars as may reasonably be necessary, is given to the managing director within one month of such date.

(3) Where the person claiming compensation proves that it was impracticable for him to notify the managing director or give the managing director 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.

87. Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution, of this Act or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect— Limitation.

(a) the action or legal proceeding shall not be commenced against the Corporation 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 managing director 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 next after the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

88. Notwithstanding anything to the contrary in any law—

(a) where any judgment or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued against the Corporation or against any immovable property of the Corporation or any of its trains, vehicles, vessels or its other operating equipment, machinery, fixtures or fittings; but the managing director shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgment or order, be awarded against the Corporation to the person entitled thereto;

(b) no immovable property of the Corporation or any of its trains, vehicles, vessels or its other operating equipment, machinery, fixtures or fittings shall be seized or taken by any

Restriction on
execution against
property of
Corporation.

person having by law power to attach or distrain property without the previous written permission of the managing director.

Overcharge and undercharge.

89. (1) Where the amount paid for the carriage of any passenger or goods by the Corporation, or for inland waterways ports charges, is found to be incorrect, then if such amount is—

- (a) an overcharge, the passenger or the person who paid the charge shall be entitled to a refund of the amount of the overcharge;
- (b) an undercharge, the Corporation 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 reasonably be necessary is given—

- (i) by the person claiming such overcharge to the managing director; or
- (ii) by the managing director, to the person against 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 Corporation, as the case may be, so, however, that where such undercharges caused by any information or description subsequently found to be incorrect such period of six months shall commence from the discovery by the Corporation 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 that ticket, shall be given if, within two months of the date of the expiry of the availability of such ticket, a notice in writing containing such particulars as may reasonably be necessary is given to the managing director by the person claiming the refund.

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

90. Whenever any person claims compensation against the Corporation in respect of any injury alleged to be suffered by him as a result of the operations of the Corporation, any court or person having by law, or 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 thought.

Medical examination of persons claiming compensation.

91. Any notice or other document required or authorized under this Act to be served on the Corporation, or the managing director, may be served—

Service of notice, etc., on the managing director.

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

92. Any notice or other document required or authorized under this Act to be served on any person by the Corporation or the managing director or any employee may be served—

Service of notice, etc., by the managing director.

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

Regulations

93. (1) The Minister may make regulations generally with respect to the services performed and the functions provided by the Corporation, for the maintenance of order on any premises occupied by the Corporation or in any inland waterways port or any train, vessel or vehicle of the Corporation and, without prejudice to the generality of the foregoing, with respect to—

Regulations.
5 of 2007, s. 24.

- (a) the proper control, management and protection of any such premises, train, vessel or vehicle and any property of the Corporation;
- (b) the proper control and management of inland waterways ports and the entrances thereof, the prevention and removal of obstructions therein and the regulation of any work, service or facility performed or provided thereat;

(c) *(Deleted by 5 of 2007, s. 24)*

(d) the control of all persons on any such premises, the maintenance of order thereon and the admission or exclusion of persons therefrom;

(e) subject to the provisions of any written law,—

(i) the taking of measures for the prevention of vessels from leaving any inland waterways ports if overloaded, improperly loaded, improperly found, insufficiently manned or without qualified officers or engineers or with a number of passengers in excess of the number that can be carried with reasonable safety or if otherwise unseaworthy;

(ii) the examination and certification of masters, mates and engineers of vessels engaged in trade upon inland waterways, tugs, dredgers, fishing boats and light craft and the charges and licences payable in respect thereof;

(iii) the registration, licensing, inspection and control of ferries, tugs, launches, hulks, fishing or ferry boats or other craft upon inland waterways, the charges to be paid therefor and the number of passengers to be carried therein; and

(f) the protection of vessels and cargoes and the removal, destruction, sale or abandonment of stranded vessels and their cargoes and appurtenances which obstruct or are likely to obstruct the fairway of any inland waterways port, the payment of expenses in connection therewith and the levy and recovery of a rent for the right of a hulk or wreck or wreckage to lie in any inland waterways port.

(2) The power of the Minister to make regulations under this section in relation to any matter shall not be construed as derogating from any other power conferred upon him under this Act to make provision in relation to any such matter in any different manner.

PART XII—APPLICATION OF LAWS OF OHE COMMUNITY,
TRANSITIONAL, SAVINGS, ETC.

Application of
Community laws.
E.A. Cap. 18.

94. (1) Part V of the East African Railways Corporation Act shall cease to have the force of law in Kenya, except in relation to things done or falling to be done in respect of Kenya before the commencement of this Act.

(2) All regulations and orders made or deemed to be made under section 84 or 96 or any other provision of the East African Railways Corporation Act shall, insofar as they apply to Kenya or to the East African Railway Corporation in Kenya or to any employee of the East African Railways Corporation who continues in the service of the Corporation under or by virtue of section 95, continue in force with necessary adaptations with respect to Kenya and to the Corporation and to any employee thereof and shall be deemed for all purposes to have been made under this Act (both in respect of service occurring, or anything done or falling to be done, before as well as after the commencement of this Act) and may be modified or revoked by the Minister under the corresponding provision of this Act accordingly.

(3) The Minister may by order made and laid before the National Assembly within six months from the commencement of this Act adapt or modify any law of the Community relating to any subject or matter for which provision or to which reference is made in this Act.

(4) This Act shall apply notwithstanding any Community or other written law.

95. (1) Every contract made by or on behalf of the East African Railways Corporation which at the commencement of this Act falls wholly to be performed within Kenya shall, whether or not in writing and whether or not otherwise assignable in law by either party, have effect on and after the commencement of this Act as if made by or on behalf of the Corporation with the other party or parties thereto and as if references therein to the East African Railways Corporation or any employee or authority thereof were references to the Corporation or the corresponding employee or authority of the Corporation.

Transitional and savings.

(2) All the liabilities at law of the East African Railways Corporation which at the commencement of this Act fall wholly to be discharged within Kenya shall thereupon by virtue of this section and without further assignment become the liabilities of the Corporation.

(3) Notwithstanding anything in subsections (1) and (2), the liabilities of the East African Railways Corporation in respect of any money borrowed by it under section 28 of the East African Railways Corporation Act or in respect of any stock issued by that Corporation or charged upon its property shall not become a liability of the Corporation under those subsections but may be dealt with by orders made under subsection (4).

E.A. Cap. 18.

(4) The Minister may, from time to time, after the commencement of this Act by order declare that any property of the East African Railways Corporation or any liabilities or contracts of that Corporation

to which subsections (1) and (2) do not apply, or any part or proportion thereof, shall, on a day to be specified in the order, become property, liabilities or contracts of the Corporation subject to such terms or provisions as may be specified in the order, and all such orders shall take effect in Kenya according to their terms.

(5) All legal proceedings pending in Kenya by or against the East African Railways Corporation in respect of any property, liabilities or contracts which become property, liabilities or contracts of the Corporation under this section shall be deemed to continue or be continued by or against the Corporation.

(6) The Tariff Book and all directions, orders, rules, authorizations and other things published, made, given or done by the East African Railways Corporation under the East African Railways Corporation Act, or any subsidiary legislation thereunder, subsisting at the commencement of this Act, shall on and after that day be deemed to have been published, given, made or done by the Corporation.

(7) Every person who at the commencement of this Act is an employee of the East African Railways Corporation resident and serving in Kenya (not then being under notice of dismissal or resignation) shall on that day and subject to this Act become an employee of the Corporation on the same terms and conditions.

(8) Every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document affecting or evidencing title to property, shall, without payment of fee or other charge and upon request made by or on behalf of the Corporation, do all such things as are by law necessary to give final effect to the transfer of property mentioned in any order made under subsection (4).

(9) Subject to subsection (10), in this section liabilities and contracts which fall wholly to be discharged or performed in Kenya shall include liabilities and contracts in respect of—

- (a) goods or services received and utilized or due to be received and utilized in Kenya by the East African Railways Corporation;
- (b) a cause of action in tort which arose in Kenya;
- (c) only such judgements obtained in Kenya before the commencement of this Act as arise out of liabilities or contracts within subsection (1) or (2).

(10) A liability or contract shall not be deemed to fall wholly to be discharged or performed in Kenya merely by reason of the headquarters of the East African railways Corporation being or having been in Kenya.

(11) Notwithstanding the provisions of this section subject to any order made by the Minister under subsection (4) and to the provisions of subsection (7), no liability arising out of any contract of employment entered into by the East African Railways Corporation with any person who is not a citizen of Kenya at the commencement of this Act including any liability for any retirement or other benefits, shall become liability of the Corporation.

(12) Notwithstanding anything in this section or in any written law, it shall be lawful for the Corporation pending the vesting of any property by orders made under subsection (4) to manage, operate, use and deal with the property of the East African Railways Corporation in Kenya for any of the purposes of the Corporation as if such property were the property of the Corporation and as if the provisions of this Act applied thereto, but subject to such provisions with regard to that user, including provisions for any financial adjustments or arrangements, as the Minister may from time to time direct; and the Corporation shall have power, subject to any such direction of the Minister, to have recourse to any such property and income arising therefrom for the purpose of meeting any liabilities or obligations of the Corporation or of the East African Railways Corporation, whether or not liabilities or obligations assumed by the Corporation under this section.

96. (1) Any contract made and any act or thing done or purported to be made or done or any act or thing omitted to be done in Kenya on behalf of or in the name of Kenya Railways prior to the incorporation of the Corporation under this Act by any person acting in good faith and with due or apparent authority in that behalf shall be deemed to be a contract, act or thing made or done or an act or thing omitted to be done, as the case may be, by the Corporation under this Act.

Contracts, etc.
on behalf of
Corporation before
commencement of
this Act.

(2) The times for notices and claims under section 86 or 89 and the periods of limitation set out in section 87 shall, in respect of any claim, action or legal proceedings arising out of any of the matters covered by subsection (1), commence from the date of the commencement of this Act.

FIRST SCHEDULE

(s. 6)

PROVISIONS AS TO THE BOARD AND THE CORPORATION

- Tenure of office. 1. The chairman and the directors appointed under paragraph (f) of section 4 shall, subject to the provisions of this Schedule, hold office for such period not exceeding three years and on such terms as may be determined in the instruments of their appointment, and shall be eligible for reappointment.
- Vacation of office. 2. Each director mentioned in the preceding paragraph may—
- (a) resign his office by notice to the Minister in writing at any time;
 - (b) be removed from office by the Minister in writing if he—
 - (i) has been absent from two consecutive meetings of the Board without permission of the Board; or
 - (ii) is incapacitated by prolonged physical or mental illness; or
 - (iii) is otherwise unable or unfit to discharge his functions.
- Deputies. 3. Each of the directors mentioned in paragraphs (c), (d) and (e) of section 4 may, from time to time, depute in writing an officer of his Ministry or Authority to attend meetings of the Board in his place and the officer so deputed shall at such meetings have the same powers as his principal.
- Meetings. 4. The Board shall meet for the despatch of business at such times and places as it shall appoint, or failing any such appointment, as the chairman shall appoint:
- Provided that the Board shall meet not less than six times in any financial year.
- Notice of meetings. 5. The chairman or any three directors may, by not less than twenty-four hours written notice to all other directors, summon a special meeting of the Board at the headquarters of the Corporation at any time.
- Special meetings. 6. Except where a shorter period is appointed under paragraphs 4 or 5, notice of the date, time and place of each meeting shall be given in writing at least five clear days beforehand to every director at such address in Kenya as he shall have notified to the Corporation from time to time:

Provided that the failure of any director to receive such notice shall not invalidate any proceedings.

7. The quorum necessary for the transaction of business by the Board shall be five. Quorum.

8. The chairman shall preside at meetings of the Board: Chairman.

Provided that if he is not present at the start or at any time during a meeting, the directors present, if a quorum, may choose one of their number, other than the managing director, to act as chairman during the chairman's absence from that meeting.

9. Questions arising at meetings shall be decided by a majority of the votes of the directors present and voting: Voting.

Provided that in the case of any equality of votes, the chairman of the meeting shall have a second or casting vote.

10. The Board shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the directors present thereat. Minutes.

11. Subject to this Schedule, the Board may determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof. Other procedures.

12. (1) If a director is directly or indirectly interested in any contract, proposed contract or other matter and is present at a meeting of the Board 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 the fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of that matter. Disclosure of interest.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

13. The affixing of the common seal of the Corporation shall be authenticated by the signatures of the chairman or some other director authorised generally or specially by the Board to act for the purpose, and of an employee of the Corporation authorised generally or specially by the Board to act for the purpose. The common seal.

Contracts and instruments.

14. 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 Corporation by any person generally or specially authorised by it for that purpose.

Proof of documents.

15. Any document purporting to be a document duly executed or issued under the seal of the Corporation or on behalf of the Corporation shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.

SECOND SCHEDULE

(s. 33)

SPECIFIED ARTICLES

(a) Gold, silver and other precious metals, coined or uncoined, manufactured or unmanufactured, and any coins, whether made of gold, silver or any other metal.

(b) Precious or semi-precious stones, jewellery and trinkets.

(c) Watches, clocks and timepieces of any description.

(d) Government securities.

(e) Stamps.

(f) Bills of exchange, promissory notes, bank-notes, currency notes and orders or other securities for payment or money.

(g) Maps, plans, writings and title-deeds.

(h) Paintings, engravings, lithographs, pictures, photographs, carvings, statuary, sculpture, antique furniture and other works of art.

(i) Art pottery, glass, china and marble.

(j) Cameras and cinematograph apparatus (including films).

(k) Lace, furs and feathers.

(l) Opium and narcotic preparations.

(m) Musk, sandalwood oil and other essential oils used in the preparation of perfumes.

(n) Pyrethrum extract.

(o) Musical and scientific instruments, wireless and television sets, radiograms, record players, tape recorders and all electronic instruments and equipment.

(p) Ivory in any form.

(q) Any article the value of which exceeds Sh. 20,000 per ton.

THIRD SCHEDULE

(ss. 2 and 56)

| | |
|------------|---------------|
| Asembo Bay | Kowuor |
| Homa | Mbita Point |
| Homa Bay | Mfangano |
| Kadimu | Mohoru Bay |
| Karungu | Port Victoria |
| Kendu Bay | Sindo |
| Kisumu | Sio |

[Subsidiary]
L.N.109/1983,
L.N.328/1995.

SUBSIDIARY LEGISLATION

Regulations under section 81

THE KENYA RAILWAYS CORPORATION (PENSIONS) REGULATIONS

PART I—PRELIMINARY

Citation. 1. These Regulations may be cited as the Kenya Railways Corporation (Pensions) Regulations.

Interpretation. 2. (1) In these Regulations, unless the context otherwise requires—

“Board” means the Board of Directors of the Corporation;

“Corporation” means the Kenya Railways Corporation;

“house allowance” means the estimated value of quarters which shall be deemed to be 15 per centum—

(a) of the salary of the officer excluding inducement pay, overseas addition (U.K.) or other personal allowance if the salary scale in which the officer is serving is non-incremental;

(b) of the initial salary of the officer excluding inducement pay, overseas addition (U.K.) or other personal allowance where the segment of the salary scale in which the officer is serving is incremental;

but the estimated value of quarters shall not exceed one hundred and fifty pounds per annum;

“inducement pay” means emoluments payable, and so described, in accordance with the recommendations contained in the report of the Commission on the Civil Services of the East African Territories and the East African High Commission, 1953-1954;

“other public service” means public service other than service in the Corporation;

“overseas addition (U.K.)” means emoluments payable, and so described, in the recommendation contained in the report of the Commission on the Public Service of the East African Territories and the East African High Commission, 1960;

“pensionable emoluments”—

(a) in respect of service in the Corporation includes salary, the pensionable part of inducement pay, the pensionable part of overseas addition (U.K.), personal allowance and house allowance, but does

[Subsidiary]

not include any duty allowance, training allowance, entertainment allowance or any other emoluments whatever;

(b) in respect of other public service, means emoluments which count for pension in accordance with the law or regulations in force in that service;

“pensionable office” means—

(a) in respect of an officer’s service in the Corporation, an office—

(i) to which he has been appointed (on probation or otherwise) by the authority having power for the time being to make appointments to the service of the Corporation on terms which include eligibility for the grant of pension under these Regulations or under any regulations revoked by these Regulations; and

(ii) which he has not ceased to hold on those terms;

(b) in respect of other public service, an office which is, for the time being, a pensionable office under the law or regulations in force in that service;

“pensionable service” means service which may be taken into account in computing pension under these Regulations;

“personal allowance” means a special addition to salary granted personally to the holder for the time being of the office and which is specifically stated to be pensionable;

“public service” means—

(a) service in a civil capacity under the Government of Kenya or of any country or territory in the Commonwealth;

(b) service in the Corporation;

(c) service under the High Commission, the Organization, or the Community, otherwise than in the East African Railways and Harbours Administration or the East African Railways Corporation;

(d) service in the East African Harbours Corporation or the East African Posts and Telecommunications Corporation;

(e) service in the Kenya Ports Authority or the Kenya Posts and Telecommunications Corporation;

(f) any other service which the Minister may determine to be public service for the purposes of these Regulations;

[Subsidiary]

“qualifying service” means service which may be taken into account in determining whether or not an officer is eligible by length of service for pension or gratuity;

“salary” means the salary attached to a pensionable office, or, where provision is made for taking service in a non-pensionable office into account as pensionable service, the salary attached to that office;

“scheduled government” means the government of a country, or an authority, set out in the Schedule;

“service in the Corporation” or “service of the Corporation” means public service in a civil capacity under the Corporation or under the High Commission, the Organization or the Community in the East African Railways and Harbours Administration or the East African Railways Corporation;

“service in the group” means service in the Corporation and under a scheduled government or scheduled governments;

“service under the Community” or “service of the Community” means service in an office of the Community as provided for in paragraph 3 of Article 61 of the Treaty for East African Co-operation;

“wife” includes, in the case of an officer under whose religion or tribal custom polygamy is lawful, any person to whom the officer is lawfully married in accordance with the tenets of that religion or tribal custom, and in that case the amount of pension, gratuity or other allowance for which a wife is eligible under these Regulations shall be divided equally among all the wives during the period in which there is more than one wife eligible therefor; and “widow” shall be construed accordingly;

“widow” includes widower.

(2) For the purposes of these Regulations, the service of an officer—

- (a) under the High Commissioner for Transport in Kenya and Uganda in the Kenya and Uganda Railways Corporation;
- (b) under the Government of Tanganyika in the Tanganyika Railways or the Tanganyika Ports Services,

shall be deemed to have been service in the Corporation as if the Kenya and Uganda Railways and Harbours, the Tanganyika Railways and the Tanganyika Ports Services had been amalgamated prior to the commencement of the officer’s service under either of such authorities; and the expression “service of the Corporation” or “service in the Corporation” shall be deemed to include a reference to any such service under either or both of those authorities.

[Subsidiary]

(3) Where an officer has been confirmed in a pensionable office and is thereafter appointed to another pensionable office, then unless the terms of that appointment otherwise require, the last mentioned office is, for the purpose of these Regulations, an office in which he has been confirmed.

(4) Where it appears to the managing director that there is no satisfactory proof of the correct age of an officer or of a child, then the managing director may, upon such evidence as he may think fit, presume the age of the officer or of the child, and the presumed age shall be taken as the correct age of the officer or of the child for the purpose of these Regulations.

PART II—PENSIONS, GRATUITIES AND ALLOWANCES

3. (1) There shall be charged on and paid out of the funds of the Corporation all such sums of money as may from time to time be granted by the Corporation by way of pension, gratuity or other allowance in accordance with these Regulations. Pensions, etc., to be charged on funds of the Corporation.

(2) Notwithstanding the provisions of these Regulations, the Minister may, in relation to a specified class of officers, approve a scheme of retirement, pensions, gratuities, or other payments (hereinafter referred to as an “approved special retirement scheme”) and that scheme shall have effect as if the provisions thereof were part of these Regulations.

4. (1) No pension, gratuity or other allowance shall be granted under these Regulations to an officer except on his retirement from the public service in one of the following circumstances— Circumstances in which pension may be granted.

(a) on or after attaining the age of fifty years;

(b) in the case of transfer to other public service, in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity; so long as, if his service in such other public service is superannuated under the Egerton Agricultural Retirement Benefits Scheme which came into force on 1st July, 1966, the Federated Superannuation System for Universities or a similar insurance scheme, he has retired on one of the grounds mentioned in subparagraph (a), (c), (d), (e) or (f);

(c) on the abolition of his office;

(d) on compulsory retirement for the purpose of facilitating improvement in the organization of the department to which he belongs, by which greater efficiency or economy may be effected;

(e) on medical evidence to the satisfaction of the Corporation that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that the infirmity is likely to be permanent;

[Subsidiary]

(f) in the case of service in the Corporation, on termination of service in the public interest as provided for in regulation 5 or, in the case of transfer to any other public service, on termination of service in the public interest under a corresponding provision in any law or regulations relating to the grant of pension in respect of public service;

(g) on retirement in accordance with any approved special retirement scheme.

(2) A gratuity may be granted to a female officer, in accordance with these Regulations, who resigns on or with a view to marriage or is required to retire on account of her marriage, notwithstanding that she is not otherwise eligible under this regulation for the grant of a pension, gratuity or other allowance.

(3) This regulation shall not preclude the payment of a sum of money payable under an approved special retirement scheme otherwise than upon retirement.

(4) No officer shall have an absolute right to compensation for past services or to pension, gratuity or other allowance; nor shall anything in these Regulations affect the liability of an officer to be dismissed according to law.

(5) Where it is established to the satisfaction of the Minister that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced or withheld.

Termination of service in the public interest.

5. (1) Where an officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him unto the provisions of these Regulations, the Corporation may grant a pension, gratuity or other allowance as it thinks just and proper not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in regulation 4 (1) (e).

(2) The Corporation shall not grant a pension, gratuity or other allowance less in amount than that for which the officer is eligible under this regulation without the concurrence of the Board.

Compulsory retirement.

6. The Corporation may require an officer to retire from the service of the Corporation—

(a) at any time after he attains the age of fifty years;

(b) in the case of a female officer, on account of her marriage;

(c) in accordance with the terms of any approved special retirement scheme.

[Subsidiary]

7. (1) Except in cases provided for in paragraph (2), a pension granted to an officer under these regulations shall not exceed the full pensionable emoluments drawn by him at the date of his retirement, but no scheduled pension commencing on or after 1st July, 1991, shall be less than two hundred and forty pounds per annum.

Maximum Pension.
L.N. 328/1995.

(2) An officer who has been granted a pension in respect of other public service shall not at any time draw from the funds of the Corporation an amount of pension which when added to the amount of any pension or pensions drawn in respect of other public service, exceeds the full pensionable emoluments drawn by him at the date of his retirement.

(3) Where an officer receives, in respect of some period of public service, both a pension and a gratuity, the amount of that pension shall be deemed for the purpose of paragraph (2) to be what it would have been if part of it had not been commuted.

(4) For the purpose of this regulation, an additional pension granted in respect of an injury shall not be taken into account; but where the officer is granted such additional pension under these Regulations, the amount thereof, together with the remainder of his pension or pensions, shall not exceed five-sixth of his highest pensionable emoluments drawn at any time during the course of his public service.

8. Where an officer to whom a pension has been granted under these Regulations is appointed to another office in the public service the payment of his pension, or any part thereof, may, with his consent, and if the Corporation thinks fit be suspended during the period of re-employment.

Suspension of
pension on re-
employment.

9. A pension, gratuity or other allowance granted under these Regulations shall not be assignable or transferable except for the purpose of satisfying—

Pensions, etc., not to
be assignable.

- (a) a debt due to the Corporation or due to the Commissioner of Income Tax in respect of income tax;
- (b) an order of a court for the payment of periodical sums of money towards the maintenance of the wife, or former wife, or minor child of the officer to whom the pension gratuity or other allowance has been granted,

and shall not be liable to be attached, sequestered, or levied upon for or in respect of any debt or claim whatever except a debt due to the Corporation or due in respect of income tax.

10. (1) Where a person to whom a pension or other allowance has been granted under these Regulations is adjudicated bankrupt, or is declared insolvent by judgement of a court, or becomes, in the opinion of the Corporation, incapable of managing his affairs by reason of any infirmity of mind, then the pension or allowance shall forthwith cease.

Pensions, etc., to
cease on bankruptcy,
insanity, etc.

[Subsidiary]

(2) Where an officer is adjudicated bankrupt or declared insolvent by judgment of a court, or becomes, in the opinion of the Corporation, incapable of managing his affairs by reason of any infirmity of mind, either—

- (a) after retirement in circumstances in which he is eligible for pension, gratuity or other allowance, under these Regulations but before the pension, gratuity or other allowance is granted;
- (b) before retirement, and he has not obtained his discharge from bankruptcy or insolvency, or has not in the opinion of the Corporation, regained his capacity to manage his affairs, at the date of retirement,

then in the former case, any pension or other allowance eventually granted to him shall cease as from the date of adjudication, declaration or so becoming incapable, as the case may be, and, in the latter case the pension or other allowance may be granted, but shall cease forthwith and not become payable, and in either case the gratuity may be granted but shall not be paid to him.

(3) Where a pension or other allowance ceases, or where a gratuity is not paid, by reason of this regulation, the Corporation may from time to time during the remainder of that officer's life, or during such shorter period or periods, either continuous or discontinuous, as the Corporation thinks fit, direct all or any part of the moneys to which that person would have been entitled by way of pension, gratuity or other allowance, had he not become bankrupt, insolvent or incapable of managing his affairs, be paid to, or applied for the maintenance or benefit of all or any, to the exclusion of the other or others of the following, that is to say, that person and his wife, child or children, or such other dependants as the Corporation may determine, in such proportion and manner as the Corporation thinks proper; and the moneys shall be paid or applied accordingly.

(4) Moneys applied for the discharge of the debts of the person whose pension or other allowance has ceased, or whose gratuity has not been paid, by reason of this regulation, shall, for the purpose of this regulation, be regarded as applied for his benefit.

(5) Where a person whose pension or other allowance has ceased, or whose gratuity had not been paid, by reason of this regulation, obtains his discharge from bankruptcy or insolvency, or in the opinion of the Corporation regains his capacity to manage his affairs, the Corporation may direct that the pension or other allowance shall be restored and the gratuity, or so much thereof (if any) as remains after deducting any payment made under paragraph (3), paid, as from the date of discharge or regaining of capacity, as the case may be, or any later date; and the pension or other allowance shall be restored, and the gratuity or remainder thereof, if any paid accordingly.

Pensions, etc., may
cease on conviction.

11. (1) Where a person to whom a pension or other allowance has been granted under these Regulations is sentenced to a term of imprisonment, the pension or allowance shall, if the Corporation so directs, cease as from the date the Corporation shall determine.

[Subsidiary]

(2) Where an officer is sentenced to a term of imprisonment after retirement in circumstances in which he is eligible for pension, gratuity or other allowance under these Regulations, but before the pension, gratuity or other allowance is granted, then—

- (a) paragraph (1) shall apply as respects any pension or other allowance which may be granted to him; and
- (b) the Corporation may direct that any gratuity which may be granted to him shall not be paid.

(3) Where a pension or other allowance ceases, or a gratuity is not paid, by reason of this regulation, the Corporation may direct all or any part of the moneys to which that person would have been entitled by way of pension, gratuity or other allowance, but for the provisions of this regulation, be paid or applied in the same manner in all respects as provided in regulation 10; and the moneys shall be paid and applied accordingly.

(4) Where a person whose pension or other allowance ceases or whose gratuity is not paid by reason of this regulation, after conviction at any time receives a free pardon, the pension or allowance shall be restored with retrospective effect, or his gratuity shall be paid, but in determining whether arrears of the pension or allowance are payable to that person and in computing the amount thereof and the amount of any gratuity, account shall be taken of all moneys paid or applied under paragraph (3).

12. (1) Where a person to whom a pension or other allowance has been granted under these Regulations otherwise than under regulation 15 becomes either a director of a company the principal part of whose business is in any way directly concerned with the Government of Kenya or an officer or servant employed in Kenya by any such company, without the prior permission in writing of the Corporation, the pension or allowance shall cease if the Corporation so directs.

Pensions, etc., on accepting certain appointments.

(2) The Corporation may, on being satisfied that the person in respect of whose pension or other allowance a direction under paragraph (1) has been given has ceased to be a director of that company, or to be employed as an officer or servant of the company in Kenya, give directions for the restoration of the pension or allowance, with retrospective effect if it thinks fit, to such a date as it may specify; and the pension or other allowance shall be restored accordingly.

13. (1) Where an officer holding a pensionable office who is not on probation or agreement, or an officer holding a non-pensionable office to which he has been transferred from a pensionable office in which he has been confirmed, dies while in the service of the Corporation, the Corporation shall grant to his legal personal representative a gratuity of an amount not exceeding twice his annual pensionable emoluments, or his commuted pension gratuity, whichever is the greater.

Gratuity when an officer with less than ten years' service dies.

[Subsidiary]

(2) Where an officer to whom a pension or other allowance has been granted under these Regulations dies after retirement from the service of the Corporation, and the moneys paid or payable to him between the date of his retirement and the date of his death on account of any such pension or other allowance in respect of any public service are less than twice the amount of his annual pensionable emoluments or the commuted pension gratuity for which he would have been eligible under paragraph (1) had he died on the date of his retirement, whichever is the greater, the Corporation may grant to his legal personal representative a gratuity equal to the deficiency.

(3) For the purpose of this regulation—

“annual pensionable emoluments”, in paragraph (1), means the emoluments which would be taken into account for the purpose of computing the grant of a pension or gratuity to the officer if he had retired at the date of his death in the circumstances described in regulation 4

“commuted pension gratuity” means the gratuity which might have been granted to the officer under regulation 35 if his public service had been wholly in the service of the Corporation and if he had retired at the date of his death in the circumstances described in regulation 4 (1) (e) and had elected to receive a reduced pension and a gratuity equal to one-quarter of the pension which he might have been granted at the time of his death.

Pensions to dependants on death of officer in service or on retirement.

14. (1) Subject to these Regulations—

- (a) where an officer who has served the Corporation for ten or more years dies after he has retired from the service of the Corporation having been granted a pension under these Regulations, there shall continue to be paid a dependant’s pension, on the terms and subject to the conditions set out in paragraph (2), to a widow or child of the officer for a period of five years next following the date of the officer’s death, the dependant’s pension to be at the rate of the officer’s pension at the date of his death;
- (b) where a pensionable officer who has served the Corporation for ten or more years dies while in the service of the Corporation, the Board may grant to a widow or child of the officer, in addition to any grant made under regulation 13, a dependant’s pension, on the terms and subject to the conditions set out in paragraph (3), for a period of five years next following the date of the officer’s death, at a rate not exceeding the amount of any pension that could have been granted to the officer if he had retired on medical grounds on the date of his death.

(2) Where a widow to whom a dependant’s pension has been granted under this paragraph dies or otherwise ceases to be entitled to the dependant’s pension, the child or children who are entitled, in accordance with the terms and conditions set out in paragraph (3), to a dependant’s pension, shall be entitled in accordance with those terms and conditions to receive the dependant’s pension for the remainder of the period of five years from the date of the officer’s death which is still outstanding at the date on which the widow dies or otherwise ceases to be entitled to the dependant’s pension.

[Subsidiary]

(3) A dependant's pension shall be paid in accordance with and subject to the following terms and conditions—

- (a) where the deceased officer leaves a widow, whether or not he also leaves children, the widow shall, for as long as she remains unmarried during the period of five years, be entitled to receive the whole of the dependant's pension at the appropriate rate provided for under paragraph (1);
- (b) where the deceased officer does not leave a widow, or if within the period of five years during which the dependant's pension is payable under this regulation the deceased officer's widow dies or remarries, any child of the deceased officer who is entitled at the appropriate date to receive the dependant's pension, shall be entitled to receive, and if more than one child, in equal shares, the dependant's pension at the appropriate rate provided for under paragraph (1);
- (c) a dependant's pension or a share thereof shall not be payable to a child who has attained the age of twenty-one years unless, and only during the time, that child is receiving full-time education at a university, college, school or other educational establishment approved by the Minister for the purpose of this regulation;
- (d) a dependant's pension or share thereof granted to a female child under this paragraph shall cease upon her marriage at any age;
- (e) in the event of a child ceasing to be entitled to a share of a dependant's pension, his or her share shall, from the date of cessation, be divided equally between all the other children then still entitled to receive the pension, and if only one child then remains so entitled, the whole dependant's pension shall be paid to him;
- (f) where the deceased officer leaves more than one widow, then the dependant's pension shall be shared equally among them, and in the event of any one of them dying or otherwise ceasing under any of the provisions of this paragraph to be entitled to a share of the dependant's pension, then the pension shall be paid to the remaining widow or shared among the remaining widows accordingly;
- (g) no dependant's pension or share thereof shall be payable after the fifth anniversary of an officer's death.

(4) No dependant's pension shall be payable under this regulation in respect of an officer who has not had at least ten years' service with the Corporation and every pension or other allowance granted under any of the provisions of these Regulations to that officer shall, unless it has ceased earlier, cease absolutely on the death of the officer.

[Subsidiary]

Pension to dependants where an officer is killed on duty.

15. (1) Where an officer dies as a result of injuries received—
- (a) in the actual discharge of his duty;
 - (b) without his own default; and
 - (c) on account of circumstances specifically attributable to the nature of his duty while in the service of the Corporation, the Corporation may grant in addition to the grant, if any, made to his legal personal representative under regulations 13 and 14—
 - (i) where the deceased officer leaves a widow, a pension to her while unmarried at a rate not exceeding ten-sixtieths of his annual pensionable emoluments at the date of the injury or sixty pounds a year, whichever is the greater;
 - (ii) where the deceased officer leaves a widow whom a pension is granted under subparagraph (i) and a child or children, a pension in respect of each child, until the child attains the age of twenty-one years, of an amount not exceeding one-eighth of the pension specified in that subparagraph;
 - (iii) where the deceased officer leaves a child or children, but does not leave a widow or no pension is granted to the widow, a pension in respect of each child, until the child attains the age of twenty-one years, of double the amount specified in subparagraph (ii);
 - (iv) where the deceased officer leaves a child or children and a widow to whom a pension is granted under sub-paragraph (i) and the widow subsequently dies, a pension in respect of each child, as from the date of the death of the widow and until the child attains the age of twenty-one years, of double the amount specified in subparagraph (ii);
 - (v) where the deceased officer does not leave a widow, or if no pension is granted to the widow and where his mother was wholly or mainly dependant on him for her support, a pension to the mother, while she remains without adequate means of support, of an amount not exceeding the pension which might have been granted to his widow.

(2) A pension shall not be payable under this regulation at any time in respect of more than six children; and where there are more than six children in respect of whom, but for this paragraph, a pension would be payable, then the amount payable in respect of six children shall be divided equally among all the children during the period in which there are more than six children of pensionable age.

(3) In the case of a pension granted under paragraph (1) (v), if the mother is a widow at the time of the grant of the pension and subsequently remarries, the pension shall cease as from the date of remarriage; and if it appears to the

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Corporation at any time that the mother is adequately provided with other means of support, the pension shall cease as from such date as the Corporation may determine.

(4) A pension granted to a female child under this regulation shall cease upon her marriage at any age.

(5) For the purpose of this regulation—

(a) an officer who dies as a result of injuries received while travelling in pursuance of official instructions shall be deemed to have died as the result of injuries received—

(i) in the actual discharge of his duty;

(ii) without his own default; and

(iii) on account of circumstances specifically attributable to the nature of his duty;

(b) an officer proceeding by a route approved by the managing director to or from Kenya at the commencement or termination of his service in the Corporation, or of a period of secondment, duty or leave therefrom, who dies as a result of damage to the vessel, aircraft or vehicle in which he is travelling, or of an act of violence directed against that vessel, aircraft or vehicle, shall, if the Corporation is satisfied that the damage or act of violence is attributable to circumstances arising out of a war in which Kenya may be engaged, be deemed to have died as a result of injuries received—

(i) in the actual discharge of his duty;

(ii) without his own default; and

(iii) on account of circumstances specifically attributed to the nature of his duty.

(6) In the case of an officer not holding a pensionable office, the expression “pensionable emoluments” in this regulation shall mean emoluments enjoyed by him which would have been pensionable emoluments if the office held by him had been a pensionable office.

(7) For the purpose of this regulation, the expression “child” includes—

(a) a posthumous child;

(b) a step-child or illegitimate child born before the date of the injury and wholly or mainly dependent upon the deceased officer for support;

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(c) an adopted child, adopted in a manner recognized by law before the date of the injury and wholly or mainly dependent upon the deceased officer for support.

Cap. 236.

(8) This regulation shall not apply in the case of the death of an officer if his dependants are entitled to compensation under the Workmen's Compensation Act or to compensation under any other law.

PART III—OFFICERS WITHOUT OTHER SERVICE

Application of Part III.

16. Except where the Minister in any special case otherwise directs, this Part shall not apply in the case of an officer transferred to or from the service of the Corporation from or to other public service except for the purpose of determining whether that officer would have been eligible for the pension or gratuity, and the amount of pension or gratuity for which the officer would have been eligible, if the service of the officer had been wholly in the Corporation.

To whom and at what rate pensions are payable.

17. (1) Subject to these Regulations, an officer holding a pensionable office in the service of the Corporation who has been in that service in a civil capacity for ten or more years may be granted on retirement a pension at the annual rate of one-five-hundredth of his pensionable emoluments of each completed month of his pensionable service.

(2) For the purpose of this regulation, "pensionable emoluments" shall be construed, in respect of locomotive shunters and drivers, locomotive firemen, guards or travelling ticket examiners, who have made additional contributions under the provisions of the East African Railways and Harbours Superannuation Fund Regulations or the East African Railways Corporation Provident Fund Regulations, as the case may be, and who have retired from the service of the Corporation as drivers, firemen, guards or travelling ticket examiners or in an office equivalent thereto, as including normal pensionable emoluments increased in respect of the period during which any additional contributions were made, by the percentage which those additional contributions bear to the normal pensionable emoluments.

(3) Where an amount in respect of mileage allowance has been consolidated into salaries, the normal pensionable emoluments for the purpose of paragraph (2) shall be determined by reference to the pensionable emoluments which would have been applicable and consolidation of mileage allowance into salaries not taken place.

Gratuities where length of service does not qualify for pension.

18. An officer otherwise qualified for a pension who has not been in the service of the Corporation in a civil capacity for ten years, may be granted on retirement a gratuity not exceeding five times the annual amount of pension which, if there had been no qualifying period, might have been granted to him under regulation 17.

Marriage gratuities to eligible officers.

19. Where female officer, having held a pensionable office in the service of the Corporation for not less than five years and having been confirmed in a pensionable office, resigns from the service of the Corporation with a view to marriage, or is required to retire from the service of the Corporation on account

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of her marriage, and is not eligible for the grant of a pension or otherwise eligible for a gratuity under this Part, she may be granted on production, within six months after her resignation or retirement or such longer period as the managing director may in any particular case allow, of satisfactory evidence of her marriage, a gratuity not exceeding one-twelfth of a month's pensionable emoluments for each completed month of pensionable service in the service of the Corporation or one year's pensionable emoluments, whichever is less.

PART IV — TRANSFERRED OFFICERS

20. This Part shall apply only in the case of an officer transferred to or from the service of the Corporation from or to other public service.

Application of Part IV.

21. (1) Where the other public service of an officer to whom this Part applies has been wholly under one or more of the scheduled governments, and his aggregate service would have qualified him, had it been wholly in the service of the Corporation, for a pension under these Regulations, he may, subject to regulation 4 (1) (b), on his retirement from the public service in circumstances in which he is permitted by the law or regulations made thereunder to retire on pension or gratuity, be granted, in respect of his service in the Corporation, a pension of an amount that bears the same proportion to the amount of pension for which he would have been eligible had his service been wholly in the Corporation, as the aggregate amount of his pensionable emoluments during his service in the Corporation bears to the aggregate amount of his pensionable emoluments throughout his service in the group.

Pension for service wholly within one group.
L.N. 328/1995.

(2) In determining, for the purpose of this regulation, the pension for which an officer would have been eligible if his service had been wholly in the Corporation—

- (a) in the application of regulation 29, his pensionable emoluments shall be determined by reference to the pensionable emoluments enjoyed by him at the date of retirement from the public service or during the three years or lesser period preceding that date, as the case may be, except that where the officer is not serving in a scheduled government at that date, the date upon which he was last transferred from the service of a scheduled government shall be deemed to be the date of his retirement for the purpose of this subparagraph;
- (b) no regard shall be had to an additional pension granted under regulation 33 or 34;
- (c) regard shall be had to the condition that a pension may not exceed the full pensionable emoluments drawn by him at the date of his retirement;
- (d) no period of other public service under a scheduled government in respect of which no pension or gratuity is granted to him shall be taken into account.

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(3) For the purpose of this regulation, the aggregate amount of an officer's pensionable emoluments shall be taken as the total amount of pensionable emoluments which he would have received or enjoyed had he been on duty on full pay in his substantive office or offices throughout that period of service in the group which is taken into account as pensionable service under these Regulations:

Provided that—

- (i) in calculating the aggregate amount of his pensionable emoluments, no account shall be taken of any service under a scheduled government in respect of which no pension or gratuity is granted to him;
- (ii) where under regulation 30 part only of any service in a civil capacity other than in a pensionable office is taken into account as pensionable service, a proportionate part only of the officer's aggregate pensionable emoluments during that service shall be taken into account for that calculation.

Pension where other service not within the group.

22. (1) Where the other public service of an officer to whom this Part applies has not included service under any of the scheduled governments, and his aggregate service would have qualified him, had it been wholly in the service of the Corporation, for a pension under these Regulations, he may, subject to regulation 4 (1) (b), upon his retirement from the public service in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on a pension or gratuity, be granted, in respect of his service in the Corporation, a pension at the annual rate of one-five-hundredth of his pensionable emoluments for each completed month of his pensionable service in the Corporation.

(2) Where the officer is not in the service of the Corporation at the time of his retirement in the circumstances referred to in paragraph (1), his pensionable emoluments for the purpose of that paragraph shall be those which would have been taken for the purpose of computing his pension if he had retired from the public service and had been granted a pension at the date of his transfer from the service of the Corporation.

Pension where other service both within and not within the group.

23. Where only part of the other public service of an officer to whom this Part applies has been under one or more of the scheduled governments, the provisions of regulation 21 shall apply, but in calculating the amount of pension regard shall be had only to service in the group.

Gratuities where length of service does not qualify for pension.

24. (1) Where an officer to whom this Part applies retires from the public service in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity, but has not been in the public service in a civil capacity for ten years, he may, subject to regulation 4 (1) (b), be granted in respect of his service in the Corporation, a gratuity of an amount not exceeding five times the annual amount of the pension which, if there had been no qualifying period, might have been granted to him under regulation 21, 22 or 23.

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(2) Where an officer retires from the service of the Government of Kenya under the Pensions Act with a pension, notwithstanding that his total pensionable service is less than ten years, he may be granted, in respect of his service under the Corporation, a pension calculated in accordance with regulation 21, and in that case no gratuity under the provisions of this regulation shall be payable. Cap. 189.

25. (1) A female officer to whom this Part applies who resigns from public service on or with a view to marriage, or is required to retire from the public service on account of her marriage and, in consequence— Marriage gratuities.

(a) would, if the whole of her public service had been in the Corporation, have been eligible for a gratuity under regulation 19; and

(b) if she is, at the date of resignation or retirement in other public service, eligible for a gratuity under provisions corresponding to that regulation in the law or regulations in the public service in which she is last employed,

may, if she is not eligible for the grant of a pension or otherwise eligible for a gratuity under this Part, be granted a gratuity which bears to the gratuity for which she would be eligible if the whole of her public service had been in the service in which she is last employed, the proportion which the aggregate amount of her pensionable emoluments during her service in the Corporation bears to the aggregate of her pensionable emoluments during her total service in the group.

(2) For the purpose of computing such an officer's total pensionable service under this regulation, no regard shall be had to any service under a scheduled government which does not grant a gratuity to her in consequence of her resignation or retirement.

PART V—GENERAL PROVISIONS

26. (1) Subject to these Regulations, qualifying service shall be the inclusive period between the date on which an officer begins to draw a salary in respect of public service and the date of his leaving the public service, without deduction of any period during which he has been absent on leave. General rules as to qualifying service and pensionable service.

(2) No period which is not qualifying service by virtue of paragraph (1) shall be taken into account as pensionable service.

(3) No period during which an officer was not in public service shall be taken into account either as qualifying service or as pensionable service.

27. (1) Except as otherwise provided in these Regulations, only continuous service shall be taken into account as qualifying service or as pensionable service and any break in service caused by temporary suspension of employment, not arising from misconduct or voluntary resignation, shall be disregarded for the purpose of this paragraph. Continuity of service.

[Subsidiary]

(2) An officer—

- (a) whose pension has been suspended under regulation 8 or under a corresponding provision in any law or regulation relating to the grant of pension in respect of public service; or
- (b) who has retired from the public service without a pension or on account of ill health, abolition of office, or reorganization designed to effect greater efficiency or economy, and has subsequently been re-employed in the public service,

may, if the Corporation thinks fit, be granted the pension or gratuity for which he would have been eligible if any break in his public service immediately prior to his suspension, re-employment or employment had not occurred and that pension shall be in lieu of—

E.A.L.N.
21/1950.
E.A. Cap. 18.
Sub. Leg.

- (i) any pension previously granted to him under the East African Railways and Harbours Pensions Regulations, the East African Railways Corporation Pensions Regulations or from the funds of the Corporation; and
- (ii) any gratuity so granted which is required to be refunded as a condition of the application, to the officer, of this regulation,

but additional to any gratuity so granted which is not required to be refunded.

Leave without salary.

28. No period during which an officer has been absent from duty on leave without salary shall be taken into account as pensionable service unless that leave has been granted on grounds of public policy with the approval of the Corporation.

Emoluments
to be taken for
computation of
pensions, etc.

29. (1) For the purpose of computing the amount of pension or gratuity of an officer who has had a period of not less than three years' pensionable service before his retirement—

- (a) in the case of an officer who has held the same office for a period of three years immediately preceding the date of his retirement, the full annual pensionable emoluments enjoyed by him at that date in respect of that office shall be taken;
- (b) in the case of an officer who at any time during the period of three years has been transferred from one office to another, but whose pensionable emoluments have not been changed by reason of the transfer or transfers otherwise than by the grant of a scale increment, the full annual pensionable emoluments enjoyed by him at the date of his retirement in respect of the office then held by him shall be taken;
- (c) in other cases, one-third of the aggregate pensionable emoluments enjoyed by the officer in respect of his service during the three years of his service immediately preceding the date of his retirement shall be taken:

Provided that—

- (i) if that one-third is less than the highest pensionable emoluments enjoyed by him at the date of any transfer within the period of three years, those annual pensionable emoluments shall be taken;
- (ii) if the one-third is less than the annual pensionable emoluments which would have been enjoyed by him at the date of his retirement, if he had continued to hold an office from which he has been transferred at any time during the period of three years and had received all scale increments which, in the opinion of the Corporation, would have been granted to him, the annual pensionable emoluments which he would have so enjoyed shall be taken;
- (iii) if the one-third is more than the full annual pensionable emoluments enjoyed by him at the date of his retirement in respect of the office then held by him, those pensionable emoluments shall be taken.

(2) For the purpose of determining under paragraph (1) the pensionable emoluments that an officer has enjoyed or would have enjoyed, he shall be deemed—

- (a) to have been on duty on full pensionable emoluments throughout the period of three years immediately preceding the date of his retirement;
- (b) to have enjoyed the benefit of any increase due to a general revision of salaries in the pensionable emoluments of an office in the service of the Community, the Corporation, the East African Harbours Corporation, the East African Railways Corporation, the East African Posts and Telecommunications Corporation, the Kenya Ports Authority, the Kenya Posts and Telecommunications Corporation, or of an office of the Government of Kenya held by him as if the increase had been payable throughout the period of three years;
- (c) not to have been transferred from one office to another merely because he is promoted from one segment to another of the same scale and thereby suffers a change of nomenclature.

(3) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of three years' pensionable service before his retirement—

- (a) the average annual pensionable emoluments enjoyed by him during that period shall be taken;

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- (b) he shall be deemed to have been on duty on full pensionable emoluments throughout that period;
- (c) he shall be deemed to have enjoyed the benefit of any increase due to a general revision of salaries in the pensionable emoluments of an office in the service of the Community, the East African Railways Corporation, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation, the Kenya Ports Authority, the Kenya Posts and Telecommunications Corporation, the Corporation or of an office in the Government of Kenya held by him as if the increase had been payable throughout that period;
- (d) he shall be deemed not to have been transferred from one office to another merely because he is promoted from one segment to another of the same scale and thereby suffers a change of nomenclature.

Service otherwise than in a pensionable office.

30. (1) subject to this regulation, only service in a pensionable office shall be taken into account as pensionable service.

(2) Service in a pensionable office, otherwise than on probation, or in a substantive capacity, shall count only as to one-half of that service or such greater portion, or the whole thereof, as the Corporation may determine.

(3) Subject to paragraph (5), where a period of continuous service in a civil capacity otherwise than in a pensionable office is immediately followed by service in a pensionable office and the officer is confirmed therein, one-half of the period, or such greater portion, or the whole thereof, the Corporation may determine, may be taken into account.

E.A.L.N.
26/1970.

(4) Where an officer was a contributor under the provisions of the East African Railways and Harbours Superannuation Fund Regulations or the East African Railways and Harbours Provident Fund Regulations and has been confirmed in a pensionable office, the whole of the period during which he was a contributor, irrespective of his age during that period, shall be taken into account.

(5) Where a period of continuous service as a trainee officer in training or apprentice is immediately followed by service in a pensionable office and the officer is confirmed therein the whole of that period of continuous service shall be taken into account.

(6) Any break in service which may be disregarded under the provisions of regulation 27 may likewise be disregarded in determining for the purpose of paragraphs (2) to (5) where one period of service immediately follows another period of service.

(7) Where an officer has been transferred from a pensionable office in which he has been confirmed to an office other than a pensionable office, and subsequently retires from a pensionable office or from that other office, his service in that other office may, with the approval of the Corporation, be taken

[Subsidiary]

into account as though it were service in the pensionable office which he held immediately prior to that transfer, and except where the transfer was the result of a reduction in rank for a disciplinary offence, at the pensionable emoluments which were payable to him at the date of transfer.

(8) Where a period of service in a non-pensionable office is taken into account under this regulation, the officer shall during that period be deemed for the purposes of regulations 19, 33 and 34 to be holding a pensionable office, and where that period is taken into account under paragraph (7), to have been confirmed therein.

31. Any period during which an officer has performed only acting service in a pensionable office may be taken into account as pensionable service if the period of that acting service—

- (a) is not taken into account as part of the officer's own pensionable service in other public service; and
- (b) is immediately preceded or followed by service in substantive capacity in a pensionable office under the same government or authority,

and not otherwise.

32. (1) Except as otherwise provided in these Regulations, there shall not be taken into account as pensionable service—

- (a) any period of service while the officer was under the age of eighteen years, or, where it would be to his advantage, twenty years; or
- (b) any period of service while he was on probation or agreement, unless, without break of service, he is confirmed in a pensionable office in the public service.

(2) Any break in service which may be disregarded under regulation 27 may likewise be disregarded in determining whether the officer is confirmed in a pensionable office without break of service.

PART VI—MISCELLANEOUS PROVISIONS

33. If an officer holding a pensionable office retires from the public service in consequence of the abolition of his office or for the purpose of facilitating improvement in the organization of the department to which he belongs by which greater efficiency or economy may be effected, he may—

- (a) if he has been in the public service for less than ten years, be granted in lieu of a gratuity under regulation 18 or 24, a pension under regulation 17, 21, 22 or 23, as the case may be, as if the words "for ten years or more" were omitted from regulation 17;

Acting service.

Service under age of eighteen years or on probation or agreement.

Abolition of office and reorganization.

[Subsidiary]

- (b) if he retires from the service of the Corporation, be granted an additional pension at the annual rate of one-sixtieth of his pensionable emoluments for each complete period of three years' pensionable service:

Provided that—

- (i) the additional pension shall not exceed ten-sixtieths of his pensionable emoluments; and
- (ii) the additional pension together with the remainder of the officer's pension shall not exceed the pension for which he would have been eligible if he had continued until the age of fifty-five years to hold the office held by him at the date of his retirement, having received all increments for which he would have been eligible by that date.

Officer retiring on account of injuries. L.N. 328/1995.

34. (1) Where an officer holding a pensionable office in which he has been confirmed is permanently injured—

- (a) in the actual discharge of his duty;
- (b) without his own default; and
- (c) on account of circumstances specifically attributable to the nature of his duty,

he may—

- (i) if his retirement is thereby necessitated or materially accelerated and he has been in the public service for less than ten years, be granted, in lieu of a gratuity under regulation 18 or 24, a pension under regulation 17, 21, 22 or 23, as case may be, as if the words "for ten years or more" were omitted from regulation 17;
- (ii) if so injured while in the service of the Corporation be granted, on retirement, an additional pension calculated at the annual rate of the proportion of his actual pensionable emoluments at the date of his injury appropriate to his case as shown in the following table—

where his capacity to contribute to his own support is—

| | |
|---------------------|---------------------|
| slightly impaired | —five-sixtieths; |
| impaired | —ten-sixtieths; |
| materially impaired | —fifteen-sixtieths; |
| totally destroyed | —twenty-sixtieths: |

[Subsidiary]

Provided that the amount of the additional pension may be reduced to such an extent as the Corporation shall think reasonable where the injury is not the cause or the sole cause of retirement.

(2) An officer holding a pensionable office in which he has not been confirmed or a non-pensionable office and is so injured while in the service of the Corporation, may be granted, on retirement, a pension of the same amount as the additional pension which might be granted to him under paragraph (1) as if his office were a pensionable office and he had been confirmed therein; and regulation 35 shall not apply to a pension granted under this paragraph.

(3) For the purpose of this regulation—

(a) an officer who is permanently injured as a result of injuries received while travelling in pursuance of official instructions shall be deemed to have been permanently injured—

(i) in the actual discharge of his duty;

(ii) without his own default; and

(iii) on account of circumstances specifically attributable to the nature of his duty;

(b) an officer proceeding by a route approved by the managing director to or from Kenya at the commencement or termination of his service in the Corporation, or on a period of secondment, duty or leave therefrom, who is permanently injured as a result of damage to the vessel, aircraft or vehicle in which he is travelling, or of any act of violence directed against the vessel, aircraft or vehicle, shall, if the managing director is satisfied that the damage or act of violence is attributable to circumstances arising out of any war in which Kenya may be engaged, be deemed to have been permanently injured—

(i) in the actual discharge of his duty;

(ii) without his own default; and

(iii) on account of circumstances specifically attributable to the nature of his duty;

(4) In the case of an officer not holding a pensionable office, the expression “pensionable emoluments” in this regulation shall mean the emoluments enjoyed by him which would have been pensionable emoluments if the office held by him had been a pensionable office.

(5) Neither paragraphs (1) (ii) nor paragraph (2) shall apply in the case of an officer who, in consequence of his injury, is entitled to compensation under the Workman’s Compensation Act or to compensation under any other written law relating to workmen’s compensation where no pension is paid under this regulation.

Cap. 236.

[Subsidiary]

Gratuity and reduced pension.
L.N. 328/1995.

35. (1) An officer to whom a pension has been granted under these Regulations may, at his option exercisable not later than the day immediately preceding the date of his retirement from the public service, or at such later date as the Corporation may in any special case approve, be paid in lieu of that pension a pension at the rate of three-fourths or any greater fraction of that pension together with a gratuity equal to twenty times the amount of the reduction so made in pension.

(2) In the application of this regulation to cases where the limitation prescribed by regulation 7 (2) and (3) operates, the words "that pension" shall mean the amount of pension which the officer would have drawn from the funds of the Corporation if he had not exercised his option under this regulation.

(3) An officer whose unreduced pension does not exceed two hundred and forty pounds per annum may, at his option, exercisable before the first payment of pension has been made to him, commute the whole of his pension by a single cash payment equivalent to twenty times the amount of the pension.

Safeguard of rights under the Superannuation Fund.

36. Notwithstanding the provisions of these Regulations, where an officer who, at 31st December, 1953, was a member of the Superannuation Fund established under the East African Railways and Harbours Superannuation Fund Regulations, leaves the service of the Corporation, or while in that service or after retirement on pension therefrom dies, then he, his dependants, or his estate, as the case may be, shall be eligible to receive a cash benefit not less than the amount which would have been payable under those regulations had he left the service or died, as the case may be, on 31st December, 1983.

Questions under Regulations to be determined by the Minister.

37. Where a dispute relating to the interpretation or application of these Regulations arises, that dispute shall be determined by the Minister.

Application of Regulations.

38. These Regulations shall apply—

- (a) to every officer appointed whether on transfer from other public service or otherwise to the service of the Corporation on or after 20th January, 1978;
- (b) to every officer who was transferred from service under the High Commission, the Organization or the Community in the East African Railways Corporation to other public service prior to 20th January, 1978, who retires from the public service subsequent to that date and whose retirement benefits are payable from the funds of the Corporation.

SCHEDULE

(reg. 2)

SCHEDULED GOVERNMENTS

The East African Harbours Corporation.

The East African Posts and Telecommunications Corporation.

The East African Railways Corporation.

The High Commission, the Organization and the Community, otherwise than in respect of service in the East African Railways and Harbours Administration and the East African Railways Corporation.

The Kenya Posts and Telecommunications Corporation.

The Kenya Ports Authority.

The University of Nairobi.

Kenyatta University College.

Egerton Agricultural College.

Kenya.

Sierra Leone.

Tanzania.

Uganda.

The United Kingdom of Great Britain and Northern Ireland.

**THE KENYA RAILWAYS CORPORATION
(PENSIONS) (INCREASE) REGULATIONS**

L.N.110/1983,
L.N. 50/1997.

1. These Regulations may be cited as the Kenya Railways Corporation (Pensions) (Increase) Regulations. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“beneficiary” has the meaning assigned thereto in the specified enactments;

“Board” means the Board of Directors of the Corporation;

“Corporation” means the Kenya Railways Corporation;

“government” means one or more of the following—

(a) the Government of Tanzania;

(b) the Government of Uganda;

[Subsidiary]

(c) the East African High Commission or the East African Common Services Organization in respect of both the self-contained and the non-self-contained services and the East African Community in respect of the Corporations and the General Fund Services;

“other public service” has the meaning assigned to it in regulation 2 of the pensions regulations;

“pension” means a pension or other benefit payable by way of periodical payments, but does not include any gratuity or any sum payable otherwise than by way of periodical payments, nor the whole or any portion of a pension which has been commuted;

“pension authority” means, in relation to a pension, the authority by whom the pension is payable;

Sub. Leg. “the pensions regulations” means the Kenya Railways Corporation (Pensions) Regulations;

“the revoked regulations” means the regulations revoked by regulation 13;

“scheduled pension” means a pension awarded under any of the enactments or regulations specified in the First Schedule and payable out of the funds of the Corporation;

“the specified enactments” means—

Cap. 192. (a) the Widows’ and Orphans’ Pensions Act ;

E.A. Cap. 18. (b) the East African Railways and Harbours Widows’ and Orphans’
Sub. Leg. Pensions Regulations;

(c) the East African Railways Corporation Widows’ and Orphans’ Pensions Regulations; and

(d) the Kenya Railways Corporation (Widows’ and Orphans’ Pensions) Regulations.

Increase of scheduled pensions.
L.N. 50/1997. 3. (1) Subject to the provisions of these Regulations, there shall be paid, with effect from 1st July, 1996, on every scheduled pension, together with any increases granted previously, the appropriate increase specified in relation thereto specified in the second Schedule.

(2) No increase shall be payable under this regulation—

(a) on any scheduled pension which became payable on or after the 1st January, 1979, where the amount of the pension is calculated by reference to a salary received on or after the 31st December, 1978;

[Subsidiary]

No. 4. of 1979.

(b) on any pension to which the Pensions (Increase) (Amendment) Act, 1979, applies;

(c) except to—

(i) a person who has attained the age of fifty-five years; or

(ii) a person who has retired on grounds of ill health; or

(iii) a person who is permanently incapacitated from engaging in full-time employment; or

(iv) a woman who has at least one dependant; or

(v) a woman who is in receipt of a pension under the Widows' and Orphans' Pensions Act, the Asian Widows' and Orphans' Pensions Act, the Asian Officers' Family Pensions Act or the Widows' and Children's Pensions Act, as the case may be, and who has attained the age of forty years; or

Cap. 192.

Cap. 193.

Cap. 194.

Cap. 195.

(vi) a person who is under the age of sixteen years.

(3) In the case of an additional pension granted under regulation 33 of the East African Railways Corporation Pensions Regulations or regulation 34 of the pensions regulations, the appropriate increase specified in the Second Schedule shall be payable as if that additional pension had commenced at the date of the injury giving rise thereto.

(4) Notwithstanding the revocation of the East African Railways Corporation Pensions (Increase) Regulations, nothing in this regulation shall operate so as to reduce the amount of any increase, or deprive any person of any increase payable under those Regulations.

E.A. Cap. 18.

Sub. Leg.

4. Where a scheduled pension is determined by reference to a rate of emoluments paid by a government, the payment of any, and if so how much, increase in accordance with the provisions of regulation 3, shall be at the discretion of the Corporation, which shall have regard to the emoluments on which that pension was commuted and to any general revision of salaries by which such emoluments have been increased.

Amount of increase discretionary in certain cases.

5. Where a person is or becomes eligible for a scheduled pension and in addition thereto is or becomes eligible for a pension or pensions in respect of other public service, the amount by which that scheduled pension shall be increased under these Regulations shall be an amount that bears the same proportion to the amount by which the aggregate of the scheduled pension and that pension or pensions in respect of other public service would have been increased under these Regulations had the aggregate amount been wholly payable from the funds of the Corporation as his scheduled pension bears to the aggregate amount of that scheduled pension and that pension or pensions in respect of other public service.

Provisions in the case of other public service.

[Subsidiary]

Provisions applicable to increases.

6. Subject to these Regulations, any provision made by or under a specified enactment shall, in so far as it relates to the apportionment of the cost of a pension between two or more pension authorities or to the manner in which a pension is to be paid, or to the proof of title to sums payable on account of a pension or in so far as it prohibits or restricts the assignment or charging of a pension or its application towards the payment of debts, have effect in relation to any increase payable under these Regulations as it has effect in relation to the scheduled pension in respect of which the increase is payable.

Increase payable by the Corporation.

7. Where a scheduled pension is increased under these Regulations, the cost of that increase shall be charged on and paid out of the funds of the Corporation.

Pensioner deemed in receipt of scheduled pension.

8. Where under a specified enactment a scheduled pension which is payable to a pensioner is being paid to some other person, the pensioner shall, for the purposes of these Regulations, be deemed to be in receipt thereof.

Penalty for false statements, etc.

9. Any person who, for the purpose of obtaining either for himself or for another person a sum which is payable under these Regulations, knowingly makes a false statement shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding two months or to both.

Minister may declare any pension a scheduled pension.

10. The Minister may, by order, declare any pension or class of pension to be a scheduled pension for the purposes of these Regulations.

Provision for granting of an allowance in certain cases.

11. (1) Where a pension under the specified enactments is or became payable to a beneficiary on or after 1st July, 1963, and that pension is less than the aggregate of—

- (a) the registered pension, if any, in respect of that beneficiary on the 30th June, 1963, together with the increases which would be payable under these Regulations if the pension had become payable on the 30th June, 1963;
- (b) the registered pension, if any, in respect of that beneficiary on the 30th June, 1966, together with the increases which would be payable under these Regulations if the pension had become payable on the 30th June, 1966;
- (c) the registered pension, if any, in respect of that beneficiary on the 31st December, 1971, together with the increases which would be payable under these Regulations if the pension had become payable on the 31st December, 1971;
- (d) the registered pension, if any, in respect of that beneficiary on the 30th June, 1977, together with any increases which would be payable under these Regulations if the pension had become payable on the 30th June, 1977; or

[Subsidiary]

(e) the registered pension, if any, in respect of that beneficiary on the 31st December, 1978, together with any increases which would be payable under these Regulations if the pension had become payable on the 31st December, 1978, there shall be granted to that beneficiary an allowance equal to the amount of the difference between that pension and whichever of those aggregates is appropriate.

(2) This regulation shall not have effect where the pension under the specified enactments has, since 30th June, 1963, been reduced in accordance with the provisions of the specified enactments.

(3) For the purpose of this regulation—

“pension” means a pension payable in respect of contributions made by the contributor while he was in the service of the Corporation;

“service of the Corporation” has the meaning assigned to it in regulation 2 of the pensions regulations.

12. Where a dispute relating to the interpretation or application of these Regulations arises, the dispute shall be determined by the Minister.

Questions under Regulations to be determined by the Minister.

FIRST SCHEDULE

(reg. 2)

| | |
|---|----------------------------|
| 1. The East African Railways Corporation Pensions Regulations. | E.A. Cap. 18. Sub. Leg. |
| 2. Any enactment or regulations referred to in regulation 39 of the East African Railways Corporation Pensions Regulations or repealed or revoked by any enactment or regulations so referred to. | E.A. Cap. 18. Sub. Leg. |
| 3. The East African Railways and Harbours Superannuation Fund Regulations. | R.E. Cap. 3. Sub. Leg. |
| 4. The Non-European Officers' Pensions Act. | Cap. 67 (1948). |
| 5. The Widows' and Orphans' Pensions Act. | Cap. 192. |
| 6. The East African Railways Corporation Widows' and Orphans' Pensions Regulations. | E.A. Cap. 18. Sub. Leg. |
| 7. The Kenya Railways Corporation (Pension) Regulations, 1983. | L.N. 109/1983. |
| 8. The East African Railways and Harbours (Widows' and Orphans' Pensions) Regulations. | R.E. Cap. 3. Sub. Leg. |

[Subsidiary]

SECOND SCHEDULE

1. Pensions commencing on or before 30th June, 1991—

| <i>Pension</i> | <i>Increase</i> |
|--|--|
| (a) not exceeding £276 | £36 or 15 per cent of the pension whichever is greater. |
| (b) exceeding £276 but not exceeding £390 | £36 plus 14 per cent of the amount by which the pension exceeds £276. |
| (c) exceeding £390 but not exceeding £585 | £52 plus 13 per cent of the amount by which the pension exceeds £390. |
| (d) exceeding £585 but not exceeding £877 | £77 plus 12 per cent of the amount by which the pension exceeds £585 |
| (e) exceeding £877 but not exceeding £1,316 | £112 plus 11 per cent of the amount by which the pension exceeds £877. |
| (f) exceeding £1,316 but not exceeding £1,974 | £160 plus 10 per cent of the amount by which the pension exceeds £1,316. |
| (g) exceeding £1,974 but not exceeding £2,961 | £225 plus 9 per cent of the amount by which the pension £1,974. |
| (h) exceeding £2,961 but not exceeding £4,441..... | £313 plus 8 per cent of the amount by which the pension exceeds £2,961. |
| (i) exceeding £4,441 | £431 plus 7 per cent of the amount by which the pension exceeds £4,441. |

2. Pensions commencing between 1st July, 1991 and 30th June, 1992—

| | |
|---|---|
| (a) not exceeding £276 | £36 or 15 per cent of the pension whichever is greater. |
| (b) exceeding £276 but not exceeding £404.. | £36 plus 14 per cent of the amount by which the pension exceeds £276. |
| (c) exceeding £404 but not exceeding £576 | £54 plus 13 per cent of the amount by which the pension exceeds £404. |
| (d) exceeding £576 but not exceeding £776 | £76 plus 12 per cent of the amount by which the pension exceeds £576. |

[Subsidiary]

- | | |
|--|---|
| (e) exceeding £776 but not exceeding £976 | £100 plus 11 per cent of the amount by which the pension exceeds £776. |
| (f) exceeding £976 but not exceeding £1,276 | £122 plus 10 per cent of the amount by which the pension exceeds £976. |
| (g) exceeding £1,276 but not exceeding £1,676 | £152 plus 9 per cent of the amount by which the pension exceeds £1,276. |
| (h) exceeding £1,676 but not exceeding £2,176 | £188 plus 8 per cent of the amount by which the pension exceeds £1,676. |
| (i) exceeding £2,176 | £228 plus 7 per cent of the amount by which the pension exceeds £2,176. |
| 3. Pensions commencing between 1st July, 1992 and 30th June, 1993, both dates inclusive— | |
| (a) not exceeding £276 | £36 or 15 per cent of the pension whichever is greater. |
| (b) exceeding £276 but not exceeding £404 | £36 plus 11 per cent of the amount by which the pension exceeds £276. |
| (c) exceeding £404 but not exceeding £576 | £50 plus 10.5 per cent of the amount by which the pension exceeds £404. |
| (d) exceeding £576 but not exceeding £776 | £68 plus 10 per cent of the amount by which the pension exceeds £576. |
| (e) exceeding £776 but not exceeding £976 | £88 plus 9.5 per cent of the amount by which the pension exceeds £776. |
| (f) exceeding £976 but not exceeding £1,276 | £107 plus 9 per cent of the amount by which the pension exceeds £976. |
| (g) exceeding £1,276 but not exceeding £1,676 | £134 plus 8.5 per cent of the amount by which the pension exceeds £1,276 |
| (h) exceeding £1,676 but not exceeding £2,176 | £168 plus 8 per cent of the amount by which the pension exceeds £1,676 |
| (i) exceeding £2,176 but not exceeding £2,476 | £208 plus 7.5 per cent of the amount by which the pension exceeds £2,476. |

[Subsidiary]

- (j) exceeding £2,476 £230.5 plus 7 per cent of the amount by which the pension exceeds £2,476.
4. Pensions commencing by 1st July, 1993 and 30th June, 1994, both dates inclusive—
- (a) not exceeding £276 £36 or 15 per cent of the pension whichever is greater.
- (b) exceeding £276 but not exceeding £576 £36 plus 10.5 per cent of the amount by which the pension exceeds £276.
- (c) exceeding £576 but not exceeding £876 £68 plus 10 per cent of the amount by which the pension exceeds £576.
- (d) exceeding £876 but not exceeding £876 £98 plus 9.5 per cent of the amount by which the pension exceeds £1,176.
- (e) exceeding £1,176 but not exceeding £1,476 £125 plus 9 per cent of the amount by which the pension exceeds £1,176.
- (f) exceeding £1,476 but not exceeding £1,776 £152 plus 8.5 per cent of the amount by which the pension exceeds £1,476.
- (g) exceeding £1,776 but not exceeding £2,076 £178 plus 8 per cent of the amount by which the pension exceeds £1,776.
- (h) exceeding £2,076 but not exceeding £2,376 £202 plus 7.5 per cent of the amount by which the pension exceeds £2,076.
- (i) exceeding £2,376 but not exceeding £2,676 £225 plus 7 per cent of the amount by which the pension exceeds £2,676.
- (j) exceeding £2,676 £246 plus 6.5 per cent of the amount by which the pension exceeds £2,676.
5. Pensions commencing between 1st July, 1994 and 30th June, 1995, both dates inclusive—
- (a) not exceeding £276 £36 or 15 per cent of the pension whichever is greater.
- (b) exceeding £276 but not exceeding £516 £36 plus 10 per cent of the amount by which the pension exceeds £276.
- (c) exceeding £396 but not exceeding £516 £48 plus 9.5 per cent of the amount by which the pension exceeds £396.

[Subsidiary]

| | |
|---|---|
| (d) exceeding £516 but not exceeding £1,236 | £59.4 plus 9.5 per cent of the amount by which the pensions exceed £516. |
| (e) exceeding £1236 but not exceeding £2,076 | £127.4 plus 9 per cent of the amount by which the pension exceeds £1,236. |
| (f) exceeding £2,076 but not exceeding £3,076 | £203.4 plus 9 per cent of the amount by which the pension exceeds £2,076. |
| (g) exceeding £3,076 but not exceeding £4,076 | £293.4 plus 7.5 per cent of the amount by which the pension exceeds £3,076. |
| (h) exceeding £4,076 but not exceeding £5,076 | £378.4 plus 8.5 per cent of the amount by which the pension exceeds £4,076. |
| (i) exceeding £5,076 | £463.4 plus 8.5 per cent of the amount by which the pension exceeds £5,076. |
| (j) exceeding £2,196 but not exceeding £2,436 | £194.4 plus 6 per cent of the amount by which the pension exceeds £2,196. |
| (k) exceeding £2,436 but not exceeding £2,676 | £208.8 plus 5.5 per cent of the amount by which the pension exceeds £2,436. |
| (l) exceeding £2,676 but not exceeding £2,916 | £222 plus 5 per cent of the amount by which the pension exceeds £2,676. |
| (m) exceeding £2,916 but not exceeding £3,156 | £234 plus 4.5 per cent of the amount by which the pension exceeds £2,916. |
| (n) exceeding £3,876 but not exceeding £3,396 | £244.8 plus 4 per cent of the amount by which the pension exceeds £3,156. |
| (o) exceeding £3396 but not exceeding £4,476 | £254.4 plus 3.5 per cent of the amount by which the pension exceeds £3, 396. |
| (p) exceeding £4,476 | £292.2 plus 3 per cent of the amount by which the pension exceeds £4,476. |

[Subsidiary]
L.N.111/1983.

**THE KENYA RAILWAYS CORPORATION
(GRATUITIES) REGULATIONS**

Citation. 1. These Regulations may be cited as the Kenya Railways Corporation (Gratuities) Regulations.

Interpretation. 2. In these Regulations, unless the context otherwise requires-

“Board” means the Board of Directors of the Corporation;

“Corporation” means the Kenya Railways Corporation and includes the services previously known as the East African Railways Corporation, the East African Railways and Harbours Administration, the Kenya and Uganda Railways and Harbours Administration and the Tanganyika Railways Port Services;

“dependant” means the widow or child of an officer or such other member of a deceased officer’s family dependent upon him at the time of his death as the managing director may determine;

“employee” means a person who is in the service of the Corporation, except a person—

- (a) who has been confirmed in a pensionable office under the provisions of any law for the time being in force in Kenya and whose legal personal representative would, in the event of the death of that person, be paid, under the provisions of that law, a gratuity of an amount not exceeding twice the deceased officer’s annual pensionable emoluments or any other payment in lieu thereof; or
- (b) who is serving under a contract, service agreement, or term of secondment to the Corporation, the terms of which provide for the payment of a gratuity; or
- (c) who is serving on a letter of temporary appointment for whom separate provision is made in respect of the grant of gratuities; or
- (d) who is serving under terms applicable to wages staff for whom provision is made in respect of the grant of gratuities;

“house allowance” means the estimated value of quarters which shall be deemed to be fifteen per cent of the initial salary of the employee excluding all other allowance;

Sub. Leg. “pensions regulations” means the Kenya Railways Corporation (Pensions) Regulations;

Sub. Leg. “Provident Fund” means the fund established by the Kenya Railways Corporation (Provident Fund) Regulations;

[Subsidiary]

“public service” and “other public service” have the meaning assigned to them in regulation 2 of the pensions regulations;

“salary” means salary or wages including house allowance at the time of an employee’s retirement or death;

“Superannuation Fund” means the fund established under the East African Railways and Harbours Superannuation Fund Regulations. R.E. Cap. 3. Sub. Leg.

3. (1) Subject to regulation 10, service for the purpose of a gratuity shall be deemed to commence from the date upon which an employee entered the service of the Corporation. Service for gratuity.

(2) In the case of an employee who contributed to the fund established under the Provident Fund (Tanganyika Railways) Ordinance, 1942, and who entered the service of the Corporation before the 1st May, 1948, but whose conditions of service did not make him eligible for the grant of gratuity under the provisions of the Provident Fund (Tanganyika Railways) Regulations, 1943, then any contributory service prior to 1st May, 1948, shall be excluded for the purpose of calculating the amount of gratuity payable, but such service may, however, be taken into account for the purpose of service to qualify for a gratuity under these Regulations. T. RE 1947. Cap. 52. T. RE 1947. Vol. V, p. 513.

4. For the purpose of these Regulations, leave of absence, be it on full or part salary or without salary, shall be regarded as service qualifying for a gratuity, but leave of absence without salary shall not be taken into account for the purpose of calculating the amount of gratuity. Leave may count as qualifying service.

5. Subject to these Regulations, the managing director may grant from the funds the Corporation and on the terms and conditions specified in the Schedule— Grant of gratuity.

(a) to an employee upon retirement or, on his death, to his dependants, a gratuity in accordance with the provisions of the Schedule;

(b) to a person or on his death, to his dependants, in the service of the Corporation, who is pensionable under the pensions regulations and who became pensionable without a break in service following immediately upon service with the Corporation, during which he was not eligible to contribute to the Provident Fund or Superannuation Fund, a gratuity in respect of that non-pensionable service provided that such service has not been taken into account for any benefit under the pensions regulations:

Provided that—

(i) no gratuity shall be payable in respect of such non-pensionable service if that person has become eligible for a pension, under the pensions regulations, equal to two-thirds of the emoluments on which the pension is based;

[Subsidiary]

- (ii) a gratuity granted under this paragraph shall be based on the salary drawn by that person immediately before the date from which his service is taken into account as pensionable service under the pensions regulations;
 - (iii) where that person leaves the service of the Corporation in circumstances in which, although a pensionable officer under the pensions regulations, he does not become eligible for any benefit under the provisions thereof, he may, if he is eligible by length of service under these Regulations for a gratuity, be granted a gratuity based on the salary drawn by him immediately before the date of his so leaving;
 - (iv) the maximum death benefit payable under these Regulations in the event of the death of that person shall be the amount, if any, by which the gratuity under these Regulations in respect of such non-pensionable service exceeds the gratuity payable under the pensions regulations;
- (c) to a person who transferred from or to the service of the Corporation to or from other public service and whose aggregate public service would have qualified him for a gratuity under these Regulations had it been wholly in the service of the Corporation, a gratuity in respect of his service in the Corporation:

Provided that—

- (i) if the person concerned transferred to and retired from or died while in the service of the Kenya Ports Authority, the gratuity shall be based on the salary drawn by him from that Authority at the date of his retirement or death; or
 - (ii) if the person concerned transferred to and retired from or died in other public service other than the Kenya Ports Authority, the gratuity shall be based on the salary drawn by him immediately before the date of his transfer, and, in either case, the gratuity shall be payable on his retirement or death; but no gratuity shall be granted for any period of such person's total service in respect of which he may receive a pension or gratuity either from other public service or from the Corporation;
- (d) to a person who elected to transfer from the Provident Fund to pensionable status under the East African Railways and Harbours Administration Pensions Regulations, 1950, with effect from 1st January, 1954, a gratuity under these Regulations in respect of his service with the Corporation up to 31st December, 1953, based on the salary drawn at the date of retirement:

[Subsidiary]

Provided that no gratuity shall be payable in respect of any service prior to 1st January, 1954, where a person has become eligible for a pension, under the pensions regulations, equal to four-fifths of the emoluments on which the pension is based.

R.E. Cap. 3.
Sub. Leg.

6. No gratuity may be granted under these Regulations unless the head of department concerned certifies that the whole period of the employee's service with the Corporation has been good and faithful and generally of such character as to justify the grant of a gratuity.

No gratuity to be granted without a certificate of service and conduct.

7. (1) Where the employment of an employee who has not less than seven years' service qualifying for gratuity is terminated on the grounds that, having regard to the conditions of the public service, the usefulness of that employee thereto and all other circumstances of the case, termination is desirable in the public interest, and a gratuity cannot otherwise be granted to him under these Regulations, the managing director may grant such gratuity as he thinks just and proper, not exceeding in amount that for which the employee would have been eligible if he had retired on medical grounds.

Termination of service in the public interest.

(2) The managing director shall not grant a gratuity under paragraph (1) which is less in amount than that for which the employee would be eligible under this regulation without the concurrence of the Board.

8. The amount of the gratuity which may be granted under the provisions of these Regulations shall be based upon the appropriate scale prescribed in, and in accordance with the provisions of, the Schedule.

Amount of gratuity payable.

9. A gratuity which may be payable on retirement shall ordinarily be payable on final retirement from the service of the Corporation, but may, at the discretion of the managing director, be paid before the expiry of any leave granted to an employee immediately prior to be the date of his actual retirement.

When gratuity payable.

10. (1) A break in service of an employee may, at the discretion of the managing director, be disregarded for the purpose of computing qualifying service for a gratuity but—

Break in service.

(a) a break in service of three years, or breaks of service aggregating seven years, shall exclude all previous service;

(b) a break in service which is disregarded under this regulation shall not be regarded as leave without salary for the purpose of regulation 4.

(2) Notwithstanding the provisions of subparagraph (1) (a), the managing director may disregard any break in service, where it is proved that the break in service was occasioned solely by reason of the employee's detention or restriction in connection with the state of emergency which was declared in Kenya on 20th October, 1952.

[Subsidiary]

Gratuity not to be assigned or attached.

11. No gratuity under these Regulations shall, while in the possession of the Corporation, be assignable or transferable or be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever, other than a debt due to the Corporation or due to the Commissioner of Income Tax in respect of income tax.

Delegation of powers.

12. The managing director may delegate all or any of his powers under these Regulations to such officers of the Corporation as he may think fit.

Dispute in interpretation.

13. Where any dispute relating to the interpretation or application of these Regulations arises that dispute shall be determined by the Minister.

SCHEDULE

GRATUITIES

| <i>Circumstances under which gratuity is granted</i> | <i>Qualifying service</i> | <i>Rate of gratuity for each completed month of services</i> |
|---|---|---|
| <p>(a) Retirement (b) Retirement on medical grounds (c) Death (d) Retrenchment (e) On attainment of 50 years of age</p> | <p>20 years' service 1 year's service 1 year's service 2 years' service 10 years' service</p> | <p>(i) one twenty-fourth of a month's salary in the case of a contributor to the Provident Fund or one who was a contributor to the Provident Fund and transferred to pensionable status with effect from 1st January, 1954;</p> <p>(ii) in all other cases one-twelfth of a month's salary less one half of the sum of any standard contributions made by the corporation in respect of the employee under the Kenya National Social Security Fund Act, during any period which has been counted as service for the purpose of his gratuity.</p> |

Special Provisions

1. (1) Employees who have retired from the service of the Corporation as members of the running staff i.e. guards, travelling ticket examiners (train and diesel rail cars), locomotive drivers, locomotive shunters or firemen and diesel rail car drivers, shall be paid gratuities at the following rates in respect of any period of service up to 31st December, 1953—

(a) the gratuity payable to a guard or travelling ticket examiner (train or diesel rail car) who was appointed as such to the Kenya and Uganda Railways and Harbours before the 1st April, 1944, shall be equal to one and a half times the gratuity that would otherwise be payable;

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- (b) the gratuity to a guard or travelling ticket examiner (train or diesel rail car) who was appointed as such to the Kenya and Uganda Railways and Harbours on or after 1st April, 1944, or at any time to the Tanganyika Railways and Ports Services, or to the East African Railways and Harbours Administration, shall be equal to one and one third times the gratuity that would otherwise be payable;
- (c) the gratuity payable to a locomotive driver, diesel rail car driver, locomotive shunter or a fireman, shall be equal to one and one quarter times the gratuity that would otherwise be payable.

(2) Where an amount of money in respect of mileage allowance has been consolidated into salaries, the gratuity shall be calculated on the salary on which it would have been calculated had consolidation of mileage allowance into salaries not taken place if this be to the advantage of the employee.

2. The gratuity payable to a Group "RC" employee who is a contributor to the Provident Fund shall be at the rate indicated in the Schedule, less the Provident Fund bonus, or a gratuity at the rate of one twenty-fourth of a month's salary for each completed month of service and the Provident Fund bonus for which he is eligible, whichever is the greater.

3. The gratuity payable in the case of an employee who has Group "RC" or wages staff service followed by Group "RB" service and who is a contributor to the Provident Fund shall be at the rate indicated in the Schedule or as hereunder, whichever is the greater—

- (i) in respect of his Group "RC" or wages staff service - at the rate of one-twelfth of a month's salary (one-twelfth of 196 hours' wages in the case of wages staff) for each completed month of service on the salary drawn immediately preceding the date of his transfer to Group "RB"; and
- (ii) in respect of his Group "RB" service - at the rate of one twenty-fourth of a month's salary for each completed month of service on the salary drawn at the date of retirement.

4. An employee who is pensionable under the pensions regulations and who, under the provisions of the East African Railways and Harbours Administration's Special Notice No. 7 of 1962, retires or is required to retire, or an employee who is a depositor to the Provident Fund and who is called upon to retire or who retires following super session in either case in the interest of the Kenyanization policy, may, on retirement, be paid a gratuity at the rate indicated in these Regulations, whether or not his age or length of service or both may otherwise qualify him for the payment.

[Subsidiary]
L.N.112/1983.

**THE KENYA RAILWAYS CORPORATION
(PROVIDENT FUND) REGULATIONS**

PART I—PRELIMINARY

- Citation. 1. These Regulations may be cited as the Kenya Railways Corporation (Provident Fund) Regulations.
- Interpretation. 2. In these Regulations, unless the context otherwise requires—
- “Authority” means the Kenya Ports Authority;
- “bonus” means a bonus added to a deposit under regulation 9;
- “chief accountant” means the person for the time being performing the duties of the chief accountant of the Corporation;
- “compulsory deposit” means a deposit made under regulation 7;
- “Corporation” means the Kenya Railways Corporation;
- “deposit” means a deposit to the Fund;
- “depositor” means a servant by whom, or on whose behalf, deposits are being made to the Fund;
- E.A. Cap.18.
Sub. Leg. “former Fund” means the Provident Fund operated under the East African Railways Corporation Provident Fund Regulations;
- “the Fund” means the Kenya Railways Corporation Provident Fund established by regulation 3;
- “interest” means compound interest;
- “other public service” means public service other than service under the Corporation or the Authority;
- “pensionable office” has the meaning assigned to it in the pensions regulations;
- Sub. Leg. “pensions regulations” means the Kenya Railways Corporation (Pensions) Regulations;
- “public service” means—
- (a) service in a civil capacity under the Government of Kenya or of any country or territory in the Commonwealth;
- (b) service in the Corporation;
- (c) service in the Authority;

[Subsidiary]

- (d) service in the East African Railways Corporation;
- (e) service in the East African Harbours Corporation;
- (f) service in the East African Posts and Telecommunications Corporation;
- (g) service under the East African High Commission, the East African Common Services Organization or the East African Community otherwise the service in the East African Railways Corporation;
- (h) service in the Kenya Posts and Telecommunications Corporation;
- (i) any other wise which the Minister may determine to be public service for the purpose of these Regulations;

“salary” includes wages and personal allowances;

“service in the Corporation or in the Authority” or “service of the Corporation or of the Authority” means public service in a civil capacity under the Corporation or the Authority or under the East African High Commission, the East African Common Services Organization or the East African Community in the East African Railways Corporation.

PART II—ESTABLISHMENT AND MANAGEMENT OF THE FUND

3. (1) With effect from the commencement of these Regulations, there shall be established a fund to be known as the Kenya Railways Corporation Provident Fund. Establishment, management and custody of the fund.

(2) All liabilities, assets, securities and investments belonging to the former Fund are hereby transferred to, and vested in, the Fund.

(3) The Fund shall be in the custody and under the control of the chief accountant who shall cause the accounts of the Fund to be kept in such a form as the managing director may determine.

4. (1) If any moneys forming part of the Fund are not, for the time being, required to meet payment to be made out of the Fund, the chief accountant shall, on behalf of the Fund, place at interest or invest those moneys in securities yielding interest as the managing director may approve. Investments and reserve fund.

(2) The chief accountant may, from the income earned in any one year on the invested capital of the Fund, after paying interest on deposits and bonuses, pay into a reserve fund such moneys as the managing director may determine.

(3) Moneys paid into a reserve fund may be used wholly or partly to meet losses on sales and depreciation of investments and for such other purposes as the managing director may determine.

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Accounts and audit.

5. (1) As soon as practicable after the close of each financial year of the Corporation, the chief accountant shall—

- (a) make up each depositor's account in the Fund and shall, in such form and in such manner as the managing director shall determine, inform each depositor of the total amount standing to his credit in the Fund at that date; and
- (b) submit to the managing director a statement showing the working of the Fund for that financial year, such statement to be published in the Corporation's Staff and General Notice, as well as in the Authority's contemporary publication, for the information of depositors.

(2) The accounts of the Fund shall be audited under the direction of the Controller and Auditor-General.

PART III—COMPULSORY DEPOSITS, BONUSES AND INTEREST

Compulsory depositors.

6. A person who, on the 19th January, 1978, was a depositor to the former Fund, shall be a depositor to the Fund.

Rate of deposit. Cap. 258.

7. (1) A depositor shall, until his death or until the termination of his service with the Corporation or with the Authority deposit in the Fund, every month, an amount equal to one-twelfth of his monthly salary or two hundred shillings, whichever is less, reduced by the amount which the Corporation or the Authority has deducted from the salary of that depositor for that month as his share of the contribution made under the provisions of the National Social Security Fund Act, in respect of that depositor.

(2) A deposit shall be calculated on the full salary of the depositor whether he is on full salary or otherwise.

(3) Where a depositor is in receipt of less than his full salary for a period exceeding two consecutive months, he may, within thirty days after the expiration of that period, elect to contribute, in respect of that excess period, at the rate of one-twelfth of the actual salary which he may receive.

(4) The chief accountant, or in the case of the Kenya Ports Authority, the finance manager, shall cause the deposit to be deducted from the salary of each depositor, and the deposit shall be deemed to be paid into the Fund on the last day of the month for which the salary is due.

Secondment of depositor.

8. A depositor who is seconded from the service of the Corporation or of the Authority shall continue during that secondment to make compulsory deposits based upon the salary of his substantive post and to participate in the benefits of the Fund.

Bonuses.

9. (1) A bonus of a sum equal to each compulsory deposit shall, with effect from the date on which the deposit is made, be paid out of the funds of the Corporation or of the Authority into the Fund to the provisional credit of the depositor.

[Subsidiary]

(2) The total of all bonuses paid to the provisional credit of a depositor since 20th January, 1978, shall not exceed fifty thousand shillings.

10. (1) Interest at a rate to be fixed annually by the managing director shall be credited separately on compulsory deposits and bonuses and shall begin to accrue in respect of each deposit, and of each bonus, on the first day of the month next following the day on which the deposit is made or bonus is credited. Rate of interest.

(2) The interest, which shall not be allowed for a broken period of a month, shall, subject to regulation 17, be calculated to the 31st December in each year and shall then be added to and become part of the principal sum and shall be deemed, for the purposes of these Regulations, to be a compulsory deposit or bonus, as the case may be.

PART IV—PAYMENTS OUT OF THE FUND

11. Where a depositor dies while in the service of the Corporation or of the Authority, or leaves the service other than on dismissal, the total amount standing to his credit in the Fund at the closing of that account shall, subject to regulation 19 (2), be paid out of the Fund, to the depositor, if living, or, if deceased, to any other person to whom by virtue of these Regulations or otherwise, payment may lawfully be made. Death, retirement, etc.

12. Where a depositor is dismissed, the amount of his compulsory deposits made to the Fund, and interest credited thereon, shall, subject to regulation 19 (2), be paid out of the Fund to the depositor; but the whole of the bonuses provisionally credited to the depositor, together with interest credited thereon, shall be withheld from the depositor and shall be paid out of the Fund into the funds of the Corporation or of the Authority. Dismissal.

13. (1) Where a depositor dies, the compulsory deposits and bonuses, inclusive of interest, standing to his credit in the books of the Fund shall, subject to regulation 19 (2), be paid by the chief accountant or the finance manager, as the case may be, to the legal personal representative of the deceased depositor. Disposal of balance upon death.

(2) Notwithstanding paragraph (1), the chief accountant or the finance manager, as the case may be, may, subject to regulation 19 (2), out of the sum standing to the credit of the deceased depositor, make payments not exceeding one thousand shillings in any one case to meet the funeral expenses of the deceased depositor or to give immediate financial relief to the widow, children or other dependants of the deceased depositor.

(3) All payments out of the Fund made under this regulation shall be a valid and effectual discharge against any demand made upon the Fund by any other person in respect of the amount standing to the credit of the depositor.

[Subsidiary]

PART V—TRANSFER TO PENSIONABLE OFFICE OR OTHER PUBLIC SERVICE

Confirmation in pensionable office or transfer.

14. Where a depositor is confirmed in a pensionable office or is transferred from the service of the Corporation or of the Authority to other public service, he shall cease to contribute to the Fund with effect from the date of that confirmation or transfer.

Payment of compulsory deposits in the funds of the Corporation or the Authority.

15. Where a depositor is confirmed in a pensionable office under the provisions of any law for the time being in force relating to the Corporation or to the Authority or to any other public service, and any of his service as a depositor to the Fund is taken into account as pensionable service, then any compulsory deposits made by him together with interest credited thereon, and any bonuses credited to his account together with interest credited thereon, in respect of the service taken into account, shall be paid out of the Fund into the funds of the Corporation or of the Authority.

PART VI—WITHDRAWALS AND THE CLOSING OF ACCOUNTS

Withdrawals.

16. A depositor may—

- a) with the approval of the managing director, at any time subsequent to a date one month before the date on which he is due to proceed on leave pending the termination of his service with Corporation or with the Authority, withdraw an amount not exceeding three-quarters of the total amount standing to his credit, in respect of deposits, bonuses and interest thereon, at the date of that withdrawal; or
- (b) at any time before proceeding on leave pending retirement or subsequent thereto, notify, in writing, the chief accountant or the finance manager, as the case may be, that he wishes to cease contributing during that leave; and where he does so, his account in the Fund shall, with effect from the date on which he proceeds on leave or at any time thereafter, as the case may be, be closed and the amount standing to his credit in the Fund shall be paid to him by the chief accountant or the finance manager, as the case may be; or
- (c) with the approval of the managing director, withdraw from the amount standing to his credit in respect of his deposits, an amount not exceeding five hundred shillings at any one time to meet extraordinary expenditure consequent upon his own illness or the illness of his wife or children; that amount to be recovered, without interest, in not more than twenty-four equal monthly instalments commencing from the month immediately following that in which the withdrawal is made.

Closing of accounts on death, transfer or confirmation of a depositor.

17. (1) Upon the death of a depositor, or upon the termination of a depositor's service with the Corporation or with the Authority, or upon the confirmation of a depositor in a pensionable office, interest up to the end of the month previous to the date of the death, termination or confirmation, as the

[Subsidiary]

case may be, upon the compulsory deposits and bonus standing to the credit of a depositor, shall be credited to his account which shall then be closed.

(2) The account of a depositor who is transferred from the service of the Corporation or of the Authority to a post in other public service and who is not confirmed in a pensionable office shall be closed only upon his death or upon his leaving the public service, whichever occurs first.

(3) The account of a depositor who is confirmed in a pensionable office in the Corporation or in the Authority and who does not wish his service as a depositor to be taken into account as pensionable service shall be closed only in one of the circumstances set out in regulation 11 and 12.

18. Where on the 31st December of the year following the year in which an account was closed there is a balance not exceeding ten shillings remaining unclaimed, or where, on the 31st December of the third year following the year in which an account was closed, there is a balance remaining unclaimed, that balance shall be paid into the funds of the Corporation or of the Authority, as the case may be. Balance in closed account.

PART VII—MISCELLANEOUS PROVISIONS

19. (1) No compulsory deposits or bonuses, including interest thereon, shall, while the depositor is in the service of the Corporation or of the Authority, be assigned or transferable or liable to be attached, sequestered or levied upon except for, or in respect of, a debt due to the Fund or to the Corporation or to the Authority, and which was incurred prior to the 20th January, 1978. Deposits and bonus not assignable.

(2) The Corporation or the Authority, as the case may be, may at any time deduct any debt due to the Fund from the sum standing in the Fund to the credit of a depositor.

20. Where a dispute relating to the interpretation or application of these Regulations arises, the dispute shall be determined by the Minister. Interpretation and application.

[Subsidiary]

L.N.113/1983,
L.N. 18/1995,
L.N. 57/1998.

**THE KENYA RAILWAYS CORPORATION (APPROVED
SPECIAL RETIREMENT SCHEME) (PENSIONS)
REGULATIONS**

Citation and
commencement

1. These Regulations may be cited as the Kenya Railways Corporation (Approved Special Retirement Scheme) (Pensions) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise require—

“Board” means the Board of Directors of the Corporation;

“Corporation” means the Kenya Railways Corporation;

“designated officer” means an overseas officer in receipt of a supplementation allowance under the British Expatriates’ Supplementation (Kenya) (Continuance) Agreement 1971/76;

“non-designated officer” means an overseas officer other than a designated officer;

“overseas officer” means an officer whose terms of service include periodical vacation leave outside Kenya with passages paid for either by the Government of the United Kingdom of Great Britain and Northern Ireland under the British Expatriates’ Supplementation Scheme or by the Corporation;

“pensionable office” means—

(a) in respect of an officer’s service in the Corporation, an office-

(i) to which he has been appointed, on probation or otherwise, by the Authority having power for the time being to make appointments to the service of the Corporation on terms which include eligibility for the grant of a pension under the pensions regulations, any regulations revoked thereunder or these regulations;

(ii) which he has not ceased to hold on those terms;

(b) in respect of other public service, an office which is, for the time being, a pensionable office under the law or regulations in force in that service;

L.N. 109/1983.

“pensions regulations” means the Kenya Railways Corporation (Pensions) Regulations, 1983;

“public service” or “other public service” has the meaning assigned to it in the pensions regulations;

“salary” means the salary attached to a pensionable office.

3. Subject to the pensions regulations, an officer holding a pensionable office in the service of the Corporation and who has been confirmed in that office and whose salary is not below Group RS 7 in the Corporation's salary scales may, on his own option, and with the approval of the Board, retire, or be required by the Board to retire from the service of the Corporation on or after attaining the age of forty years:

[Subsidiary]
Special conditions for retirement.
L.N. 18/1995.

Provided that he has completed not less than ten years of continuous service in a pensionable office.

3A. The provisions of regulation 3 shall, with effect from the 1st January, 1998 apply to all other pensionable officers of the Corporation for a period of five years.

Extension of Scheme to other pensionable officers.
L.N. 57/1998.

4. Where under these Regulations—

(a) an officer wishes to retire, he shall submit his application to the managing director who shall forward it together with his comments to the Board for approval;

Where an officer wishes to retire or is required to retire.

(b) an officer is required by the Board to retire, the managing director shall, through the officer's head of department, notify the officer that his compulsory retirement is under consideration and ask the officer if he wishes to make any representations to the Board; and on receipt of the officer's representations, the managing director shall forward those representations to the Board together with his own comments, if any, and, where the Board is not satisfied with those representations it shall order the retirement of the officer concerned.

5. For the purpose of considering whether or not an officer should be allowed to retire or be required to retire under these Regulations, the managing director and the Board shall take into account all relevant circumstances, including the overall effect of the officer's retirement and, in particular, whether that retirement may provide an opportunity for improvement in the service and that in any case the retirement of the officer will not adversely affect the services of the Corporation.

Matters to be taken into account.

6. An officer who retires in accordance with these Regulations shall be eligible for a pension or gratuity at the rate provided by the pensions regulations as if he had retired under normal circumstances.

Rate of pension.

7. These Regulations shall not apply to overseas officers.

Application of regulations.

8. Where a dispute relating to the interpretation or application of these Regulations arises, that dispute shall be determined by the Minister.

Questions under Regulations to be determined by the Minister.