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Railway Regulation Act, 1964

Act 31 of 1964

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Railway Regulation Act, 1964

Act 31 of 1964

Commenced on 22 May 1964

[This is the version of this document at 1 December 1998.]

An Act to make provision for the regulation and control of the Swaziland Railway.

1. Short title

This Act may be cited as the Railway Regulation Act, 1964.

2. Interpretation

In this Act, unless inconsistent with the context—

“**appurtenant works**” means appurtenant works as defined in the Railway Act;

“**by-law**” means by-law made by the Railway Board under section 43 of the Railway Act;

“**district executive officer**” means the chief executive officer of Railway appointed under section 15 of the Railway Act;

“**magistrate’s court**” means a court constituted under the Magistrates Courts Act [No. 66 of 1938](#);

“**officer**” or “**servant**”, in relation to the Railway, includes such officers or servants, respectively, of the Caminhos de Ferro de Mozambique as may from time to time be engaged in the operation of the Railway;

“**Railway**” means the Swaziland Railway established by the Railway Act;

“**Railway Act**” means the Swaziland Railway Act [No. 15 of 1962](#);

“**railway policeman**” means a person duly appointed under [section 3](#);

“**railway reserve**” means the railway reserve as defined in the Railway Act;

“**train**” includes rail motor coach or other vehicle travelling on the railway line;

“**warehouse**” means building or place provided or used by the Railway or by a person in charge or a railway station for the purpose of storing or depositing goods but where it is more convenient to the Railway that goods to be warehoused remain in trucks, “warehouse” shall include such trucks.

3. Appointment of railway police and their powers

- (1) The chief executive officer may appoint persons, to be called railway policemen, for the purpose of maintaining order and preventing crimes on the premises and property of the Railway.
- (2) Subject to subsection (3), a railway policeman, while in the uniform prescribed by the chief executive officer or carrying a certificate or badge of office and authorized for the purpose in writing by the chief executive officer, may arrest without a warrant a person—
 - (a) who, in his presence, commits, or
 - (b) whom he has reasonable grounds for believing has committed, an offence against this Act and, subject to section 5(3) of the Constitution, detain that person.
- (3) A person shall not be arrested or detained without warrant by a railway policeman unless there exist reasonable grounds for believing that, otherwise than by the arrest of that person, he could

not be found or made answerable to justice without an amount of delay, trouble or expense which, in the circumstances of the case, would be unreasonable.

- (4) This section shall in no way limit or restrict any power of arrest granted to any person in any other provision of this Act or any other law.

4. Offences by servants of the Railway

- (1) Any engine driver, guard, porter or other person employed by the Railway in conducting traffic upon the railway or in repairing or maintaining the works of the railway who—

- (a) is found drunk while so employed upon the railway; or
- (b) wilfully, maliciously or negligently does or omits to do any act, by the doing or omitting of which the life and limb of any person passing along or being upon the railway or the appurtenant works thereof are or might be injured or endangered, or the passage of any engine, carriages or trains is or might be obstructed or impeded;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred emalangenis or imprisonment for a period not exceeding six months or both.

- (2) Any officer or servant of the Railway, or a railway policeman, or a member of the Swaziland Police, may arrest without warrant any person who commits an offence under subsection (1) and any servant of the Railway who commits any offence against any of the by-laws.

5. Obstruction and trespass

- (1) A person who—

- (a) wilfully obstructs or impedes any officer or servant of the Railway in the execution of his duty upon the railway or upon or in the Railway Reserve or the appurtenant works; or
- (b) wilfully trespasses upon—
 - (i) the railway or the appurtenant works; or
 - (ii) any engine or carriage or other vehicle;

and refuses to quit, upon request made to him by any officer or servant of the Railway, shall be guilty of an offence.

- (2) A person committing an offence under subsection (1) and a person aiding or abetting the commission of such offence may be arrested without warrant by any officer or servant of the Railway or by any person he may call to his assistance or by any railway policeman or member of the Royal Swaziland Police Force.
- (3) A person guilty of an offence under subsection (1) shall be liable, on conviction, to a fine not exceeding twenty emalangenis or to imprisonment for a period not exceeding one month.

6. Offences relating to safety of persons and property

A person who does or causes or procures to be done any of the following acts, namely—

- (a) an act which obstructs or might obstruct the working of the railway or endangers or might endanger the lives of persons travelling thereon;
- (b) without lawful authority, moves any part of the rolling stock on the railway or leaves it on any part of the railway;
- (c) without lawful authority, moves any signals, points, wires, sleepers, rails, stop blocks or machinery on the railway or shows any signal likely to mislead;

- (d) without lawful authority, cuts down, breaks, removes, destroys or injures any fence, building, bridge or other appurtenant works or other property in or upon the railway; or
- (e) attempts or counsels the doing of, or aids or abets in doing, any of the acts mentioned in this section;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding two thousand emalangeni or to imprisonment for a period not exceeding five years or both.

7. Interference with the railway, etc.

- (1) A person who wilfully and maliciously—
 - (a) with intent to obstruct, prevent, delay or interfere with the working or construction of the railway or to obstruct, upset, overthrow, or injure or destroy any engine, tender, carriage, truck or other vehicle using the railway or to endanger the safety of any person travelling or being upon the railway—
 - (i) puts, places, casts or throws, upon or across any railway line, any wood, stone or any other matter or thing;
 - (ii) takes up, removes or displaces any rail, sleeper or other matter or thing belonging to the Railway;
 - (iii) makes or shows, hides or removes, any signal or light upon or near to any railway line;
 - (iv) turns over or diverts any points or other machinery thereof; or
 - (v) does or causes to be done any other matter or thing; or
 - (b) casts, throws or causes to fall or strike against, into or upon any engine, tender, carriage, truck, or other vehicle used upon the railway line, any wood, stone, or other matter or thing with intent to endanger the safety of any person being upon or in that engine, tender, carriage, truck or other vehicle; or
 - (c) sets fire to any station, engine-house, warehouse or other building belonging or appertaining to the Railway; or
 - (d) sets fire to any goods or property in or upon the railway or the appurtenant works; or
 - (e) attempts or counsels, or aids or abets the doing of, any of the acts mentioned in this section;

shall be guilty of an offence and liable, on conviction, to imprisonment for a period not exceeding fourteen years.
- (2) Any person may arrest without warrant a person who is found committing an offence under this section and take him before a magistrate's court having jurisdiction or may deliver him to a member of the Swaziland Police or to a railway policeman to be so taken.

8. Liability of Railway for goods carried

- (1) Unless the owner or consignor or his representative accompanies the goods and retains control of them, the Railway transporting goods shall, subject to the provisions hereinafter contained, be liable for loss of or injury to the goods from any cause whatsoever from the time it accepts the goods in accordance with law until it releases itself from liability by delivery of the goods to the consignee or his representative or by placing them in a warehouse pursuant to any by-law, except in the case of—
 - (a) an inherent defect, vice or weakness or some action of the property itself; or
 - (b) an act of God; or
 - (c) inevitable accident; or

- (d) fire; or
 - (e) civil commotion; or
 - (f) an act of the King's enemies or any inevitable superior force.
- (2) The Railway shall be liable in the cases referred to in subsection (1)(a) to (f) inclusive, if its negligence exposes the property to the cause of the loss or injury.
- (3) The Railway shall only be liable for loss arising from delay when such delay is caused by want of ordinary care and diligence on its part.

9. Effect of accepting receipt

- (1) A consignor or consignee, by accepting receipt or written contract for the transport of goods, assents to the rate, time, place and manner of transport and delivery and to the conditions therein stated.
- (2) Subject to the provisions of subsection (1), the liabilities and obligations of the Railway shall not be limited by general notice but may be limited by special contract.

10. Imposition of conditions

- (1) The Railway may impose conditions, not inconsistent with this Act or any by-law, with respect to the receiving, forwarding or delivery of any goods and with regard to the interchange of traffic with other carriers or railway administrations.
- (2) The Railway shall at each station on the railway keep a copy of those conditions and shall allow any person to inspect it free of charge at all reasonable times.
- (3) The Railway is not bound to carry any animal suffering from any infectious or contagious disease or any wild animal.

11. Carriage of dangerous goods on the Railway

- (1) No person is entitled to carry or to require the Railway to carry upon its lines any aquafortis, oil of vitriol, gunpowder, lucifer matches or any other article which is described in any by-law as being of a dangerous nature.
- (2) A person who sends by the Railway an article of the kind mentioned in subsection (1), without distinctly marking its nature upon the outside of the package containing it or otherwise giving notice in writing to the officer or servant of the Railway with whom it is left at the time of sending it, shall be guilty of an offence and liable, on conviction, to a fine not exceeding forty emalangeni or, in default of payment thereof, to imprisonment for a period not exceeding six months.
- (3) An officer or servant of the Railway may refuse to take a parcel which he suspects contains any such dangerous articles, or may require the parcel to be opened to ascertain the contents.

12. Liability for certain losses or injury

- (1) The Railway is not liable for the loss of, or injury to, any article of the following description, that is to say—
- (a) gold or silver coin;
 - (b) gold or silver in a manufactured or unmanufactured state;
 - (c) precious stones;
 - (d) jewellery;
 - (e) watches, clocks, or other time-pieces of any description;

- (f) trinkets;
- (g) bills, notes of any bank of Swaziland or elsewhere;
- (h) orders, notes or securities for payment of money;
- (i) stamps;
- (j) maps;
- (k) writings;
- (l) title-deeds;
- (m) paintings;
- (n) engravings;
- (o) pictures;
- (p) gold or silver plate or plated articles;
- (q) glass;
- (r) china;
- (s) silk in a manufactured or unmanufactured state and whether wrought up or not wrought up with other materials;
- (t) furs; and
- (u) lace;

contained in any parcel or package which has been delivered either to be carried for hire or to accompany the person of any passenger on the Railway, when the value of the article or articles contained in the parcel or package exceeds the sum of twenty emalangeni.

- (2) Subsection (1) shall not apply if at the time of delivery thereof at the office, warehouse, or receiving-house of the Railway or to any officer or servant of the Railway for the purpose of being carried or of accompanying such passenger, the value and nature of the article has been declared by the person sending or delivering the article and the increased charge hereinafter mentioned or an engagement to pay it, is accepted by the person receiving the parcel or package.
- (3) When any parcel or package containing any article specified in subsection (1) is so delivered, and its value and contents so declared, and the value exceeds the sum of twenty emalangeni, the Railway may demand and receive an increased rate of charge, to be notified in legible characters by a notice affixed in some public place or conspicuous part of the office, warehouse, or other receiving-house, where parcels or packages are received by them for the purpose of conveyance, stating the increased rates of charge required to be paid over and above the ordinary rate of carriage, as a compensation for the greater risk and care to be taken for the safe conveyance of those valuable articles.
- (4) All persons sending or delivering parcels or packages containing any articles referred to in subsection (3) at that office shall be bound by the notice without further proof of the notice having come to their knowledge.
- (5) The Railway is not bound as to the value of any such parcel or package by the value so declared, but it may require from the party suing in respect of any loss thereof or injury thereto proof of the contents by other evidence, and the Railway shall only be liable for such damages as are so proved but not exceeding the declared value, together with the increased charges before-mentioned.

13. Damages for loss of, or injury to, animals carried on the Railway

No greater damages shall be recovered from the Railway, for the loss of, or for any injury done to, any animals sent or delivered to the Railway, beyond the sums hereinafter mentioned, that is to say for any—

- (a) horse, eighty emalangeni;
- (b) mule, forty emalangeni;
- (c) donkey, sixty emalangeni;
- (d) neat cattle, a head, twenty-four emalangeni;
- (e) sheep, goat or pig, four emalangeni;
- (f) goose or turkey, two emalangeni;
- (g) pigeon, guinea pig or rabbit, twenty-five cents;
- (h) dog, four emalangeni;
- (i) animal or bird not otherwise specified, fifty cents;

unless the person sending or delivering the animal to the Railway has, at the time of the delivery, declared it to be of higher value than as above-mentioned, in which case the Railway may demand and receive, by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of the value so declared which shall be paid in addition to the ordinary rate of charge:

Provided that—

- (j) the percentage or increased rate of charge shall be duly notified by a notice affixed in legible characters in some public place or conspicuous part of the office, warehouse or other receiving-house where the animals are received by the Railway for conveyance; and
- (k) the proof of the value of the animal or bird and the amount of the injury done thereto shall, in all cases, lie upon the person claiming compensation for the loss or injury.

14. Delivery up to the Railway of things in custody of officer removed, etc.

(1) Where—

- (a) any collector of tolls or other officer employed by the Railway is discharged or suspended from his office or absconds or absents himself or dies; and
- (b) any such collector or other officer, or his wife, widow or any other member of the family, or the legal representative of any such collector or other officer, refuses or neglects, after seven days' notice in writing to that effect, to deliver up to the Railway, or to any person appointed by it for that purpose, any station, dwelling house, office, or other building with its appurtenances or any books, papers, or other things belonging to the Railway in the possession or custody of any such collector or officer at the occurrence of such an event;

then, upon application being made by or on behalf of the Railway to a magistrate's court of the district where those buildings, books, papers, or other things are, that court may, if satisfied as to those matters after hearing such evidence and affording such persons as it considers necessary the opportunity of being heard, order a member of the Royal Swaziland Police Force, with proper assistance, to enter upon such a station or other building and to eject any person found therein who refuses to leave and to take possession thereof and of any such books, papers, or other things and to deliver them to the Railway or any person appointed by it to receive them.

- (2) The Chief Justice may make rules of court as to the procedure and costs of an application under subsection (1).

15. Liability for loss of life of, or personal injury to, passengers

- (1) The Railway is only liable for loss of life of, or personal injury to, a passenger when the loss of life or personal injury is caused by the want of ordinary care, diligence or skill on the part of the Railway or of its servants and, in no case, is liable for loss of life of, or personal injury to, a passenger who is travelling, by special permission whether verbal or written of the Railway, on a train to which no passenger coach is attached.
- (2) For the purpose of this section—
“passenger” includes every person, lawfully travelling upon a train, not being a servant in respect of whom a claim for compensation under any law relating to compensation for injuries to workmen can be made for loss of life or personal injury caused by an accident to the train in which he is travelling.

16. Travelling without ticket

- (1) Subject to this section, a person who—
 - (a) travels or attempts to travel in a carriage without a ticket or pass authorizing him to do so; or
 - (b) travels in a carriage of a superior class to that which his ticket or pass entitles him; or
 - (c) travels in a carriage beyond the distance which his ticket or pass entitles him to travel,shall forthwith, on demand by any ticket collector, inspector, guard or other officer authorized by the Railway, pay as may be appropriate in each case—
 - (d) the fare for the journey contemplated or completed; or
 - (e) the difference between the fare for the class travelled and the class for which the ticket was issued; or
 - (f) the ordinary fare between the destination marked on the ticket and the actual or contemplated destination,and, in addition, but subject to subsection (3) — a fee, called a booking fee, not being less than five cents, at the rate of ten *per centum* of the sum demanded for the fare.
- (2) A person who commits an offence referred to in subsection (1)(a) to (c) shall in addition to any liability referred to in subsection (1), but subject to subsection (4), be guilty of an offence and liable, on conviction, to a fine not exceeding four emalangeni or, in default of payment thereof to imprisonment for a period not exceeding seven days.
- (3) A booking fee shall not be imposed if the person takes reasonable steps to inform the officer in charge of the train of the irregularity.
- (4) No person shall be prosecuted under this section if he satisfies the officer of the Railway demanding the fare that, in contravening the section, he was not actuated by any intent to evade the payment of any lawful fare and, if prosecuted, it shall be a defence for the accused person to satisfy the court that he was not so actuated.

17. When refund to be made by the Railway

The Railway shall refund any fare or difference in fare paid under the provisions of [section 16](#) if—

- (a) application to it for the refund is made within thirty days after the date of payment; and
- (b) the applicant had, at the time that he made the payment, a valid ticket or pass available for the journey on which he was found without the ticket or pass and had sufficient reason for its absence.

18. Defrauding or attempting to defraud the Railway

A person who defrauds, or attempts to defraud, the Railway by—

- (a) transferring, or profiting by the transfer of, a ticket or return half of any ticket or a free pass;
- (b) wilfully mutilating, falsifying or rendering illegible a ticket or free pass;
- (c) giving an incorrect or insufficient name and address;
- (d) attempting to evade the payment of his fare in other any manner;

shall, in addition to any sums which he may be liable to pay under [section 16](#) be guilty of an offence and liable, on conviction, to a fine not exceeding twenty emalangeni or, in default of payment thereof, to imprisonment for a period not exceeding one month.

19. Removal from train and arrest upon refusal to pay fare

- (1) A person who, without reasonable excuse, fails or refuses to pay forthwith on demand, by a duly authorized officer, the amount due to him in respect of a railway fare, a difference in railway fare or a booking fee, as provided by [section 16](#), shall be guilty of an offence and may—

- (a) be removed from the train at any station by the stationmaster or other person in charge of the station; or
 - (b) be allowed, at the discretion of the stationmaster or such other person, to proceed;

and a stationmaster, or any other railway official authorized by the Railway or railway policeman, may, subject to the provisions of subsection (3), arrest that person without warrant.

- (2) A person guilty of an offence under subsection (1) shall be liable, on conviction, to a fine not exceeding ten emalangeni or, in default of payment thereof, to imprisonment for a period not exceeding one month or both.
 - (3) A person shall not be arrested under the provisions of this section without warrant unless there exist reasonable grounds for believing that otherwise than by his arrest he could not be found or made answerable to justice without an amount of delay, trouble or expense which, in the circumstances of the case, would be unreasonable.