

at 7s. per day, and 6d. per day in the case of others, and the question has arisen as to whether superannuation is properly deductible in respect to these allowances. In "The Government Railways Superannuation Fund Act, 1902," pay is defined as being the actual sum paid to a contributor as salary or wages in respect to his services, but not including allowances or payment for overtime; and in "The Government Railways Superannuation Fund Contributions Act, 1903," section 2 provides that the pay of a member shall, as from the commencement of "The Government Railways Superannuation Fund Act, 1902," be deemed to be the rate of pay at which he is employed (but not including allowances or payment for overtime), and his contributions shall be deducted on this basis accordingly. Having in view the interpretation of pay as set out in the two Acts referred to, the departmental instructions in regard to the allowances granted to the men as from the 1st November, and referred to above, provide that for the purposes of superannuation no deduction was to be made on account of the allowances. The Audit Office, however, disagrees with the instruction of the Department, and contends that, as the money for payment of the allowances is shown on page 98 in the Appropriations for 1905-6 as "extra pay to members of Second Division from the 1st November, 1905," superannuation deductions should be made therefrom in the ordinary way, notwithstanding the fact that the amount is not payable under the Government Railways Department Classification Act.

Will you please advise early as to the position.

T. RONAYNE,
General Manager.

No. 7.

Minister for Railways.

PLEASE approve reference.

T. RONAYNE, General Manager.
8/1/6.

Reference approved.—J. G. W.—11/1/06.

On the whole, I am of opinion that these payments are not "pay" within the meaning of the Act, and therefore should not be included in making deductions as contributions to the Fund. The man who receives it has no legal right to it, as it is not the pay at which he is employed. If the appropriation ceases he ceases to get it, and has no cause for complaint so far as the terms of his employment are concerned. See *Upperton v. Ridley* ([1903] A.C. 281), where it was held that an extra payment of 7s. a week made to a constable for a period of five years was not "annual pay" within the meaning of the Police Pensions Act, and was therefore not to be included in computing the amount of his pension.

FRED. FITCHETT, Sol-Gen.
19/1/6.

No. 8.

J.T. R. 05/2147. 1140.

Railway Accountant.

New Zealand Government Railways,
Head Office, Wellington, 23rd January, 1906.

Superannuation Deductions.

THE question raised by the Audit Office on circular memorandum of the 10th November, regarding the method of deducting superannuation contributions on the pay-sheets since the payment of the allowances of 1s. and 6d. per day respectively were approved to certain members of the Railway staff, has been submitted to the Solicitor-General, and the following is a copy of his opinion:—

"On the whole, I am of opinion that these payments are not 'pay' within the meaning of the Act, and therefore should not be included in making deductions as contributions to the fund. The man who receives it has no legal right to it, as it is not the pay at which he is employed. If the appropriation ceases he ceases to get it, and has no cause of complaint so far as the terms of his employment are concerned. See *Upperton v. Ridley* ([1903] A.C. 281), where it was held that an extra payment of 7s. a week made to a constable for a period of five years was not 'annual pay' within the meaning of the Police Pensions Act, and was therefore not to be included in computing the amount of his pension."

With regard to the question raised by the Audit in connection with the night allowances, the necessary Order in Council has been drawn up and is now waiting signature, and the circular instruction is practically word for word of the regulation.

It is presumed, therefore, that this will meet the requirements of the Audit Office.

T. RONAYNE,
General Manager.

No. 9.

The Controller and Auditor-General.

For your information. I shall be glad to know if you can now see your way to pass the wages vouchers which are being held in abeyance.

H. DAVIDSON,
25/1/6.

Please submit papers, including the opinion of the Solicitor-General.

C. & A.-General,
26/1/06.