

No. 10.

The Hon. the Minister for Railways.

Audit Office, 29th January, 1906.

Superannuation Deductions, and the Pay of which they are the Percentage.

It does not appear to the Audit Office that it can justly alter its decision in this matter—that the rate of pay at which the members of the Railway Department are employed does not exclude the pay which they receive under the appropriation of Parliament for extra pay.

Thus the pay at the rate of which the men are employed is considered by the Audit Office to be their total pay under both the appropriation made for the purpose of the Classification Act and the appropriation taken under the powers of "The Public Revenues Acts Amendment Act, 1900." In each case the appropriation is for pay, not for an allowance; and the Minister, moreover, in explaining the proposals to which the appropriation for the extra pay subsequently gave effect, said that "the amount involved by the *increases of wages represents an annual expenditure of* . . ."

Then, though it is true that the pay authorised by the appropriation under the power of section 3 of the Public Revenues Act of 1900 may cease to be appropriated, and the member cease to get it, the same may be said of pay authorised by appropriation made for the purposes of the Classification Act. This pay may be reduced—part of it may cease to be appropriated—and the member cease to get what he was receiving before the reduction.

In the case to which reference is made, of *Upperton v. Ridley*, the 7s. a week received by the constable was entered in the pay-lists and received as "allowance for special duties" in addition to what was entered in the pay-lists and received as "amount of pay." That case consequently does not appear to the Audit Office to apply to the pay and increase of or extra pay which is appropriated for and paid to the members of a Division, and which they receive as such pay.

J. K. WARBURTON, C. & A.-General.

No. 11.

Solicitor-General.

WILL you kindly peruse the within memo. from Controller and Auditor-General, and favour with your further opinion.

T. RONAYNE, General Manager.

7/2/6.

There is an important difference between the two appropriations. If a man is engaged at a rate within the limit fixed by the Classification Act, there is a contract, and, apart from agreement, his wages can only be reduced in manner provided by section 9, (2), of the Act (*i.e.*, by Governor's message, &c.). In any other case he can proceed under the Crown Suits Act to recover them.

There is no contract in respect of the money he receives under the other appropriation. It is a pure gratuity, and in my opinion its character as such is in no way affected by the fact that the Minister spoke of it in the House as an "increase of wages."

As the Superannuation Fund is affected, I suggest that the question be referred to the Hon. the Attorney-General.

FRED. FITCHETT, Solicitor-General.

2/3/06.

No. 12.

05/2147.

Hon. Attorney-General, Wellington.

New Zealand Government Railways,
Head Office, Wellington, 9th March, 1906.

A QUESTION has arisen between the Audit Department and the Railway as to whether the extra allowance of 1s. per day made recently by the Government to certain members of the Railway service should be taken into consideration in making the deductions under the Government Railways Superannuation Fund Act. The matter was referred to the Solicitor-General, and his opinion was in turn forwarded to the Controller and Auditor-General, who does not, however, concur in the views of the Solicitor-General, who suggests that the matter should be referred to yourself. In view of the importance of the point at issue, I shall be glad if you will peruse the attached papers and favour me with your opinion.

ALBERT PITT,

Acting Minister for Railways.

No. 13.

IN my opinion the extra allowances referred to in the memorandum of the 10th November, 1905, are not "pay" within the meaning of the "Government Railways Superannuation Fund Act, 1902," and "The Government Railways Superannuation Fund Contribution Act, 1903." In both of these Acts "pay" is expressly declared not to include "allowances," and under the last-mentioned Act the pay of a member is to be deemed the rate of pay at which he is employed (but not including allowances or payment for overtime. In the memorandum of the 10th November, 1905, all the amounts are expressly stated to be "allowances." I agree with the opinion expressed by the Solicitor-General that these amounts could not be sued for by the Railway employees concerned as part of their pay or wages. The amount has been placed upon the estimates, it is true, but the employees have no right to have it so placed. When the "wages allowances" are made permanent by permanent appropriations or by an amendment of the law different considerations will arise. In the meantime, I am of opinion that the extra allowances referred to should not be taken into consideration in making the deduction under "The Government Railways Superannuation Fund Act, 1902."

Wellington, 31st March, 1906.

ALBERT PITT, Attorney-General.