

1906.

## NEW ZEALAND.

# “ THE GOVERNMENT RAILWAYS SUPERANNUATION FUND ACT, 1902 ”

(CORRESPONDENCE RELATIVE TO DEDUCTIONS FROM CONTRIBUTIONS UNDER).

*Presented to both Houses of the General Assembly pursuant to Act.*

The CONTROLLER AND AUDITOR-GENERAL to the Hon. the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

The Hon. the Speaker of the House of Representatives.

Audit Office, 27th June, 1906.

THE Controller and Auditor-General has the honour respectfully to submit to the House of Representatives, in accordance with the provisions of section 53 of “The Public Revenues Act, 1891,” a copy of the correspondence in certain cases under that section where, the Audit Office having declined to pass the pay of members of the Working Railways Department, as excluding, for the purpose of the basis for the deduction of the contributions under “The Government Railways Superannuation Fund Act, 1902,” the amount paid under the authority of Vote 71, item 26, “Extra pay to members in the Second Division from 1st November, 1905, £18,000,” in the Appropriations for the year 1905–6, the Governor determined the matter in dispute by deciding that the sum of £18,000 is not pay, but allowances within the meaning of the Act, and that consequently the same should not be taken into account when making the deductions.

J. K. WARBURTON,  
Controller and Auditor-General.

## No. 1.

05/2147, No. 17578. (Circular Memorandum.)

All Traffic Officers, Railway Accountant.

New Zealand Government Railways,  
Head Office, Wellington, N.Z., 10th November, 1905.

*Allowances to Members of the Outdoor Staff.*

It has been decided to grant the following allowances to the outdoor staff:—

*Night Allowances.*

Enginemen, Firemen, and Guards, night allowance of 5s. per night for all nights on which they are necessarily absent from headquarters on duty where no sleeping-accommodation is provided by the Department; where sleeping-accommodation is provided, 2s. 6d. per night will be allowed.

Maintenance men absent from home on duty, 1s. per night if provided with sleeping vans or huts.

These allowances to be paid as from 1st April, 1905, and arrangements should be made for payment of arrears accordingly.

*Wages Allowances.*

From 1st November inclusive the following allowances will be made to the outdoor staff specified below:—

1s. per day: Labourers and porters at 7s. (excluding tablet porters provided with free houses).

6d. per day: Storemen, horse-drivers, crane-drivers, crossing and bridge keepers, shunters, porters at 7s. 6d. (excluding tablet porters provided with free houses), porters at 6s., junior porters, and junior labourers.

3s. per week: Nightwatchmen.

The amounts accruing to staff under this arrangement must be shown separately on pay-sheets, and are not to be included in the earnings for the purpose of superannuation deduction, which is as heretofore to be made on the basis of the classification rate of pay received by each person.

Please forward lists in D/3 order of the members affected, giving name, designation, location, rate of pay, and amount of allowance, and show allowance on all future H/6's.

T. RONAYNE,  
General Manager  
(per McV.).

No. 2.

For the information of the Audit Office.

H. DAVIDSON, Accountant.  
Nov. 13, '05.

An Order in Council is necessary to regulate the terms and conditions on which the night allowances are to be granted.

Then the exclusion of the extra pay from the pay on which the contributions to the Superannuation Fund are to be computed is not authorised by the Superannuation Act, which provides that the contributions shall be on the basis of the rate of pay at which the member is employed.

J. K. WARBURTON, C. & A.-General.  
20/11/05.

Referred to General Manager, Railways.

H. DAVIDSON.  
20/11/05.

No. 3.

R.A. 106/8.

General Manager, Railways.

New Zealand Government Railways,  
Accountant's Office, Wellington, 18th December, 1905.

*Superannuation Contributions entered on Pay-sheets.*

A WAGES voucher for £4,942 14s. 6d. has been struck out of my Imprest Account and returned with the following minute by the Controller and Auditor-General:—

"Apparently the additional rates of pay entered on these pay-sheets are those provided for in the item 'Extra pay to members in Second Division' in Appropriations 1905-6. An explanation is requested as to why they are not included when computing the contributions due under the Superannuation Fund Act, which provides that these contributions shall be on the basis of the rate of pay at which the member is employed.—J. K. WARBURTON, C. & A.-G. 15/12/05."

A former minute of the Audit Office on the same subject was referred to you on the 20th November, and as it is extremely inconvenient to have large sums of imprest moneys held in abeyance I shall be glad if the matter can be dealt with at once.

H. DAVIDSON, Accountant.

No. 4.

General Manager, New Zealand Railways.

New Zealand Government Railways,  
Accountant's Office, Wellington, 10th January, 1906.

*Superannuation Contributions on Extra Pay to Outdoor Staff.*

With reference to my memo. of the 20th November and the 18th December, to which I have not had a reply, I have to inform you that the Audit Office have struck out further wages vouchers from imprest accounts totalling a large sum, and consequently causing very much inconvenience to this office and the Treasury.

Will you please deal with the objections of the Audit Office as soon as possible, that the accounts may be cleared.

H. DAVIDSON, Accountant.

No. 5.

12th January, 1906.

In re your 106-8 of the 10th instant.

Railway Accountant, Wellington.

*Superannuation Contributions on Extra Pay to Outdoor Staff.*

You have already been verbally advised that the questions raised by the Audit Office in regard to the exemption of the wages allowance granted to members of Division 2 from deduction for superannuation purposes has been referred to the Crown Law Officer, and until such time as legal opinion is obtained no further instructions can be given.

T. RONAYNE,  
(per McV.),  
General Manager.

No. 6.

R. 05/2147.

Solicitor-General, Wellington.

New Zealand Government Railways,  
Head Office, Wellington, 3rd January, 1906.

The Government have decided that from the 1st November last certain members of the outdoor Railway staff should, in addition to the rates of pay set forth in the Classification Act, be granted an allowance of 1s. per day in the case of men whose rate of pay was fixed by the Classification Act

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.

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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.

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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.

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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.

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. &amp; 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.

No. 14.

*In Executive Council.*

Wellington, 10th April, 1906.

HIS Excellency the Governor is respectfully advised to sign the attached Order in Council under section 53 of "The Public Revenues Act, 1891," deciding that the sum of £18,000 extra pay to members in Second Division from 1st November, 1905, in the Appropriations for the year 1905-6, item 26 (Working Railways), is not pay as is affirmed by the Audit Office, but allowances within the meaning of section 2 of "The Government Railways Superannuation Fund Act, 1902."

JAMES MCGOWAN.

Approved in Council.—R.J.S., 18th April, 1906. •

J. F. ANDREWS,  
Acting Clerk of the Executive Council.

PLUNKET, Governor.

ORDER IN COUNCIL.

At the Government Buildings, Wellington, this eighteenth day of April, 1906.

Present:

THE RIGHT HON. R. J. SEDDON PRESIDING IN COUNCIL.

WHEREAS by section fifty-three of "The Public Revenues Act, 1891," it is provided that if the Audit Office declines to pass any credit requisition on the ground that the credit therein is not according to law, the matter in dispute shall be determined by the Governor in Council, having before him the opinion of the Attorney-General thereon: And whereas a dispute has arisen between the Audit Office and the Railway Department respecting certain credit requisitions under the following circumstances: (1) Section two of "The Government Railways Superannuation Fund Contribution Act, 1903," provides that for all the purposes of "The Government Railways Superannuation Fund Act, 1902," the pay of a member shall, as from the commencement of that Act, 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; (2) In the parliamentary Appropriations for the year 1905-6, under item 26 (Working Railways), the sum of £18,000 was voted as "Extra pay to members in Second Division from 1st November, 1905"; (3) The Audit Office holds that the sum so voted is "pay" within the meaning of the section above referred to, and should therefore be taken into account when making deductions for the above-mentioned contributions, whilst the Railway Department holds that it is not "pay" but "allowances" within the meaning of that section, and therefore should not be taken into account when making such deductions as aforesaid; (4) The said Department has presented credit requisitions for payments made out of the aforesaid appropriation without any deduction as aforesaid having been made, and the Audit Office has declined to pass them on the ground that by reason of the premises they are not according to law:

Now, therefore, I, William Lee, Baron Plunket, Governor of the Colony of New Zealand, in exercise of the hereinbefore-recited powers, and having before me the opinion of the Attorney-General thereon, and acting by and with the advice and consent of the Executive Council of the said colony, do hereby determine the said matter in dispute by deciding that the sum of eighteen thousand pounds appropriated as aforesaid is not "pay" but "allowances" within the meaning of the aforesaid Act, and that consequently the same should not be taken into account when making deductions for the above-mentioned contributions.

J. F. ANDREWS,  
Acting Clerk of the Executive Council.

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