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FRIDAY, JUNE 22.

[1900.

PUBLIC SERVICE RECLASSIFICATION ACT 1897, No. 1542.

IN accordance with the provisions of the *Public Service Reclassification Act 1897*, the Reclassification Board makes and publishes the following determinations with reference to those matters on which it has been directed to report by the Governor in Council under section 8 of that Act:—

*“As to the arrangements for annual leave and gazetted holidays in the different Departments.”*

A.—AS TO THE FIRST, PROFESSIONAL, CLERICAL, AND GENERAL DIVISIONS.

At the time of the Board's investigation there were inequalities in the practice of granting leave of absence which bore hardly on some classes of officers, and which were the subject of numerous complaints. These anomalies we learn have since been removed by departmental action, and the Reclassification Board determines that the present arrangements for annual leave and gazetted holidays do not call for alteration.

B.—AS TO “EXEMPT” AND TEMPORARY OFFICERS.

That Officers whose duties correspond with those of the Professional Division	} Shall have leave as allowed to officers of the Professional Division.	
That Officers whose duties correspond with those of the Clerical Division		} Shall have all gazetted holidays.
That Officers whose duties correspond with those of the General Division		} Shall have Christmas Day, Good Friday, Easter Monday, Queen's Birthday, and after one year's continuous service five additional days, and one day for each further year of service up to five further years.

*“As to the claim of Letter Carriers to the exclusive right (under an old regulation) to promotion to the position of Letter Sorter.”*

The Act No. 773, section 34, provides that the Governor in Council, on the recommendation of the Public Service Board, shall have power to promote persons from one Department to another. This provision is inconsistent with the claim of the letter carriers to the exclusive right to promotion to the position of sorter. But the letter carriers urge that this privilege was accorded to them by certain regulations, and that by section 2 of the above Act this privilege was preserved to them. That section, however, does not admit of such an interpretation. It merely provides that the former Civil Service Act, No. 160, should be repealed save and except as to certain matters. But the regulations in question had no connexion with the Act No. 160. They neither purported to be nor could they have been made under that Act (see section 28). They therefore are not affected by the repeal of that Act nor any exceptions to that repeal. And as this is a question not merely between the letter carriers and the State, but between the former and other officers of the same and other Departments, no acts or statements of the officers of the Post Office Department could give the letter carriers a moral right to exclude such other officers from rights conceded to them by statute.

The Reclassification Board is of opinion that letter carriers have not legally or morally the exclusive right to promotion to the position of letter sorter.

*“As to the claims of Postmasters and other officers to have the value of quarters reckoned in the computation of their pension.”*

The determination of the Reclassification Board with regard to this matter is included in the determinations published in the *Government Gazette* of the 16th March, 1900, page 975.

*“As to the re-appointment of persons, including those under the Defences and Discipline Act, whose services have been dispensed with on the ground of retrenchment.”*

In the case of officers who occupied positions under the Public Service Acts, the Act No. 1324, section 20, makes them eligible for re-appointment, and the Reclassification Board considers that this provision should be liberally administered.

In the case of members of the Defence Forces, the Board considers that those who have been dispensed with on the ground of retrenchment should, in reference to eligibility for appointment to the General Division of the Public Service, be regarded upon repayment of any compensation as having the same rights as if still serving. Those members of the Forces who by age or other circumstances are debarred from entering the permanent Public Service, should be considered as having claims to be employed on any temporary work for which they may be qualified.

*“As to temporary employés, and as to the methods of regulating and controlling the engagement and retention of such employés.”*

The Act No. 1133, section 38, provides for the employment of persons on work of a temporary character, but, subject to certain exceptions, any such person can be employed only for three periods of three months, after which such person is disqualified for further temporary employment for a period of six months. The effect of these restrictions appears to be that the section in question is to a large extent inoperative. In most cases when temporary employés are required, an Order in Council is made declaring that the provisions of the Act shall not apply to such employés. Many hundreds of persons are now so exempted who the Board thinks should be under suitable provisions of the law.

The Reclassification Board recommends that the 38th section of the Public Service Act No. 1133 and the Regulations be altered to the effect following:—

Period of appointment not to exceed six months.

The number of periods for which any person may be temporarily employed not to be limited.

A letter of appointment from the Permanent Head stating explicitly the terms of appointment should be given to the employé.

Before the expiration of the period of appointment the Permanent Head to inquire and report to the Public Service Board upon the manner in which the employé has performed his work. If such report be favorable the Public Service Board may authorize the re-engagement of the employé for a further period not exceeding six months if his services are required, or may re-register his name for future employment.

The employé to be entitled to such notice of discharge as shall be fixed on his appointment, and in the absence of any period of notice being so fixed, the employé may be discharged without notice.

Any temporary employé may be discharged within the terms of his appointment by the Permanent Head, or by such officer as he may authorize for that purpose, or he may be dismissed for sufficient cause by the Minister on the recommendation of the Permanent Head.

A Return of all persons temporarily employed should be published in conjunction with the annual Public Service List, published under section 28 of Act No. 1133. This Return should contain the names of all persons temporarily employed on the 31st December of each year, also of all persons so employed for a period or periods amounting to 150 days during the year; but should omit the names of labourers on public works, and of persons receiving allowances for a portion of their time only.

Every temporary employé should be deemed subject to the Regulations for the guidance of officers of the Public Service relating to

Absence from Duty, &c.,  
Attendance of Officers,  
Duties of Officers, and  
Miscellaneous,

so far as such Regulations are applicable to his position.

The following Regulations to be substituted for those at present in force:—

1. Every person applying to be recorded for employment in any temporary work in any Department must forward to the Board—
  - (a) An application in his own handwriting, giving his full name and post address, his age, and describing the kind of work desired by him;
  - (b) Documentary evidence that he is of good character, industrious habits, and sound bodily health, and that he possesses the knowledge, skill, experience, physical strength, or other qualifications necessary for the performance of work of the kind which he desires.
2. When an applicant, in the opinion of the Board, has complied with the above Regulations, his full name, address, age, date of entry, and kind of work desired shall be entered in a book, to be called the "Temporary Employment Register." Provided always that, if the work desired be clerical, the Board must first be satisfied with the applicant's handwriting.
3. Whenever any person whose name is recorded in the "Temporary Employment Register" is nominated for employment under the provisions of section 38 of the Act, an entry shall be made in the register of such nomination.
4. Whenever any person whose name is recorded in the "Temporary Employment Register" is proposed for appointment to perform temporary work of the kind desired by him, and he is not available or not willing to be so appointed, his name may be removed from the register.
5. If any person shall omit to cause a reply to be delivered at the office of the Board within seven days to any letter from the Board or from any officer authorized by the Board, requesting him to state whether he is prepared to accept such temporary employment, his name may be removed from the register.

6. Every name which shall have remained on the "Temporary Employment Register" for six months from the date of entry shall be removed from the register.

In cases of emergency the Public Service Board may authorize the Permanent Head or, through him, some officer in charge of work to engage such a number of men and on such terms as to period, rates of pay, and otherwise, as may be stated in such authority.

*"As to Officers who have been declared by the Governor in Council to be exempt from the provisions of the Public Service Act (section 3), and as to whether in any and if so what cases such Officers should be Classified under the Public Service Act."*

The Reclassification Board determines that the following offices, which have been declared by the Governor in Council to be exempt from the provisions of the Public Service Act, should be classified, and that the officers to be appointed to these offices in future should be classified officers :—

*Chief Secretary's Department.*

Government Medical Officer.  
Visiting Officer, Neglected and Reformatory Schools.  
Curator, Industrial and Technological Museum.  
Fireman, Hospital for Insane, Sunbury.

*Department of Treasurer.*

Process Engraver, Government Printing Office.

*Law Department.*

Court Keeper, Crier, and Messenger, County Court, Melbourne.  
Clerk of Petty Sessions, Harrow.  
Clerk of Courts, Mansfield.

*Department of Public Works.*

Mechanical Engineer.

*Department of Trade and Customs.*

Two Watchmen.  
Marine Surveyor.  
Carpenter, Alfred Graving Dock.  
Engine-driver, Alfred Graving Dock.

*Department of Postmaster-General.*

Three Telephone Switch Operators.  
Female Sub-Manager Telephone Exchange.  
Two Female Monitors.  
Five Female Telephone Switch Operators.

*"As to the claim of Angus Cumming, Sub-Accountant, Post and Telegraph Department, to be classified as from a certain date in a higher class."*

The circumstances out of which Mr. Cumming's claim arises occurred in the year 1890. In 1891 Mr. Cumming's claim and that of another officer were investigated by a Committee of the Cabinet, consisting of Sir F. T. Sargood, and Messrs. J. M. Davies, Geo. Turner, C. J. Ham, and J. H. Wheeler. That Committee reported (on 11th July, 1891) as follows :—

" . . . We are unanimously of opinion that in view of it not appearing that the appointment of Messrs. . . . and Cumming would result in the duties of the respective offices 'being more efficiently performed' than by selecting Messrs. . . . and J. W. Skene, who are senior to Messrs. . . . and Cumming, the nominations by the Public Service Board of Messrs. . . . and Skene are strictly in accordance with the letter and spirit of the Public Service Act, section 47.

" We therefore recommend that the appointments of Messrs. . . . and Skene on probation for three months be confirmed."

This report was communicated to the Postmaster-General with the statement that it had received the approval of Ministers generally. In 1896, the matter was, however, re-opened, and the Postmaster-General submitted a case for the opinion of the Attorney-General (the Hon. I. A. Isaacs). The material facts are set out in Mr. Isaacs' opinion, a copy of which is appended hereto.

The Reclassification Board determines on the facts and for the reasons set out in Mr. Isaacs' opinion that Mr. Cumming has no claim to be classified as from any past date in a higher class.

Copy of Attorney-General's opinion (dated 17th March, 1897), referred to above.

CASE OF MR. ANGUS CUMMING.

*Opinion.*

The material facts of this case appear to be that in July, 1884 (before the coming into operation of the Act 773), Mr. Cumming was appointed by the Governor in Council to the position of sub-accountant in the Department of the Postmaster-General. When the Act, No. 773, came into force, the position of sub-accountant was classified by the Public Service Board as 3rd class, and this classification remained until June, 1890; Mr. Cumming meanwhile continuing to discharge the duties to the satisfaction of his superior officers.

In that month, however, the Public Service Board, in response to an application from Mr. Cumming, issued an order under the provisions of section 24 of the Act 773 (s. 27 of the *Public Service Act 1890*), raising the classification of the office of sub-accountant from the 3rd to the 2nd class. Eleven days after thus raising the classification of the office, the Board advertised the position of sub-accountant as vacant, and invited applications for it from persons in the service. On the 14th October, 1890, the Board nominated Mr. A. J. (? J. W.) Skene, accountant of the Lands Department, for promotion to the position, but this course did not meet with the approval of the permanent or any of the successive political heads of the Department, and has never been given effect to. The position of sub-accountant has since then continued to be classified as 2nd class, but Mr. Cumming has been discharging the duties with the classification and pay of a 3rd-class officer.

Mr. Cumming contends that when the classification of the position of sub-accountant was raised to the 2nd class, he became entitled to the higher classification assigned to the office, and that to all intents and purposes he has been a 2nd-class officer since the classification was so raised.

Section 27 of the *Public Service Act 1890* provides that the Board, with the consent of the Governor in Council, may from time to time, whenever it appears necessary, increase or diminish the total number of persons to be employed, or alter the distribution of the officers in any Department.

Section 46 of the Act contains a general power to transfer or promote officers from one Department to another, and section 47 provides that upon the occurrence of any "vacancy" in any office in the First Division, or in the Professional Division, or in the 1st, 2nd, or 3rd class of the Clerical Division, the Governor in Council, on the recommendation of the Board, may, under the conditions therein mentioned, either (1) appoint thereto any officer of the Department in which such vacancy occurs, or (2) appoint thereto an officer from any other Department.

The question raised presents features of considerable difficulty.

Assuming, as I do, for the purpose of this case (and without offering any substantive opinion on the matter), that the office of sub-accountant was properly raised by the Board to the 2nd class, I am unable to find any legal authority for the position that Mr. Cumming was himself *ipso facto* promoted to the 2nd class also.

It appears to me that there was no intention on the part of the Board at the time that Mr. Cumming should in fact be so promoted. Indeed, their subsequent action as regards Mr. Skene is evidence to the contrary. Therefore, Mr. Cumming's present claim rests upon the bare legal effect of the raising of the office of sub-accountant.

If his contention is correct, then, notwithstanding the contrary intention of the Government and the Board, and notwithstanding that, in the absence of the order raising the status of the office, he might have been the very next day required, under section 24 of Act 773, to assume the duties of a 3rd class position elsewhere, the mere fact of his being sub-accountant on the day the Order in Council appeared raised him irrevocably to the 2nd class.

I cannot find in the Act of Parliament anything to sustain this contention. The promotion could not have taken place under section 34 of Act 773 (s. 46 of No. 1133), because that relates to promotion from one Department to another, and this was the section apparently under which the proposed transfer of Mr. Skene was intended. Nor could it have been under section 6 of the *Public Service Act 1889* (s. 47 of No. 1133), because there was no "vacancy" within the meaning of that section, or, if there was, it meant necessarily that it was a vacancy in a 2nd class position, on the assumption that Mr. Cumming did not personally rise in class with the position of sub-accountant; and, further, no actual appointment was made under that section.

Unless, therefore, the raising of the status of any office carries with it automatically the permanent raising of the classification of its occupant for the time being, while the restoration of that office to the lower grade would not bring back the occupant to his former class (a somewhat inconsistent position), I do not think Mr. Cumming's claim is well founded.

ISAAC A. ISAACS, Attorney-General.

*“As to the claim of D. Ferguson, an Officer of the 3rd class, Clerical Division, in the Customs Department, to be classified as from a certain date in a higher class.”*

Upon the classification of the Public Service in December, 1884, under Act No. 773, Mr. Ferguson's work as sub-collector of customs at Wodonga was placed in the 3rd class of the Clerical Division, the maximum salary of which was £450. At that time Mr. Ferguson was receiving—

Salary, as a 3rd-class officer	...	...	...	£411	13	4
Remuneration for acting as receiver and paymaster				50	0	0
Allowance for forage	...	...	...	54	12	0
“Border” or “Murray” allowance	...	...	...	54	12	0
And he had the use of Government quarters which he says were worth	...	...	...	50	0	0

The Secretary for Customs states that the “Border” or “Murray” allowance was to cover extra expenses of residing on the Murray.

By Act No. 773, section 27, “If the (Public Service) Board find that any person . . . doing work . . . is in receipt of a greater salary than the maximum of the class assigned to that work by the Board, such person shall be transferred as soon as possible to some other branch or Department in which he can be employed upon work equivalent to the amount of his salary.”

The Public Service Board held the word “salary” to include any money allowance of a permanent character which was in the nature of payment for services as distinguished from reimbursement of expenses incurred in the performance of duty, and this interpretation was generally applied in the Board's classification. Assuming this interpretation of the section to be correct, Mr. Ferguson was found in receipt of a greater salary than the maximum of the class assigned to his work, and he should have been transferred to work of a higher, *i.e.*, the 2nd, class. It, however, served the interests of the Customs Department to continue Mr. Ferguson in his then position. Mr. Ferguson, for reasons sufficient to him, did not press for the promotion he was entitled to. He says that though he discussed the matter verbally with the Minister and Secretary, he made no application in writing, and he did not address the Public Service Board on the subject; and he stated in his evidence before the Reclassification Board that so long as he was left at Wodonga he was quite satisfied with his position.

Thus matters continued until 1891, when, in the interests of the Department, it was thought desirable that Mr. Ferguson should be transferred to Melbourne without immediate promotion, and it appears there has since been no opportunity of giving him his due promotion, owing to the policy of retrenchment and general cessation of promotions. On this transfer Mr. Ferguson was deprived of his allowance as receiver and paymaster (£50) and his “Border” allowance (£54 12s.), besides his quarters and forage allowance. On the other hand, his salary of £411 13s. 4d. had, through the saving of his rights acquired under Act No. 160, risen by increments to £485. Mr. Ferguson applied for compensation for the loss he had sustained through his non-promotion, coupled with his removal from Wodonga, and the consequent deprivation of his allowances. The matter was brought under the consideration of the Public Service Board, and they awarded him a gratuity of £31 5s. 4d., to be paid annually, until he received his promotion. With this decision Mr. Ferguson was dissatisfied, and on his application the Reclassification Board has been directed by the Governor in Council to determine and report on his case.

Mr. Ferguson's complaints are—

- 1st. That he was not promoted when he became entitled to promotion.
- 2nd. That he was removed from Wodonga not only without promotion, but at a reduced salary.
- 3rd. That for years since his transfer to Melbourne the Department has availed itself of his professional services in legal matters unconnected with his office of chief inspector of distilleries without recompense, although a considerable saving of professional fees was thereby effected.

The Reclassification Board is of opinion—

As to the 1st complaint—

That Mr. Ferguson assented to being continued at Wodonga in his then position without promotion, instead of being sent elsewhere with promotion to the 2nd class.

As to the second complaint—

That had Mr. Ferguson been promoted to the 2nd class on his transfer to Melbourne in 1891, he would have been entitled under the practice established by the Public Service Board to enter that class at his then salary, viz., £485, plus £50 (allowance as receiver and paymaster), equal to £535, which sum should also be taken as his salary when he was transferred without promotion.

As to the third complaint—

That it was not a matter which the Reclassification Board could take into account in classifying Mr. Ferguson's present office, because the work mentioned is unconnected with that office, and Mr. Ferguson's successor would probably not have either the professional qualifications or status to enable him to perform such work ; That it would be fittingly met by a gratuity, but as to the past, promotions and gratuities for special work having been in almost every instance withheld, the Board can make no recommendation in Mr. Ferguson's favour.

The Reclassification Board determines—

- 1st. That Mr. Ferguson is not now entitled to be classified as from a past date in the 2nd or any higher class.
- 2nd. That from the time Mr. Ferguson was transferred from Wodonga to Melbourne his salary should be made up to £535.
- 3rd. That for any professional services to be rendered by Mr. Ferguson in legal matters unconnected with his office, he should be paid by suitable gratuities ; that such gratuities should be based—not on the amount of fees which would be paid for such services to a professional man in general practice, but—on the difference between Mr. Ferguson's salary and that of a professional officer employed on work of a similar character.

*“As to the claim of J. W. Wallace, an officer of the 4th class, Clerical Division, in the Post and Telegraph Department, to be classified as from a certain date in a higher class.”*

Up to February, 1884, Mr. Wallace was a telegraph operator at Geelong, in the 4th class, under Act No. 160, at the maximum salary of class, £350. On 1st February, 1884, leave for twelve months was granted to the postmaster at Belfast. His place was taken by Mr. Dore, postmaster at Colac; his place by Mr. Dod, postmaster at Queenscliff; and his place by Mr. Wallace, who was on 19th March, 1884, appointed by the Governor in Council postmaster at Queenscliff, as from 4th February, 1884, and he was occupying that position when the work was classified by the Public Service Board. His remuneration at Queenscliff was—

Salary as officer of the 4th class ..	...	...	£350
Allowance for acting as signal master	...	...	20
Allowance as receiver and paymaster	...	...	12
Total	...	...	<u>£382</u>

By section 27 of Act No. 773, “If the (Public Service) Board find that any person . . . doing work . . . is in receipt of a greater salary than the “maximum of the class assigned to that work such person shall be transferred as soon “as possible to some other branch or Department in which he can be employed upon “work equivalent to the amount of his salary.” In computing “salary” under this section it was the practice of the Public Service Board to include any permanent money allowance which was in the nature of payment for services. The class assigned to the work of the office of postmaster, Queenscliff, was the 4th, the maximum of which was £350. The Public Service Board, while it classified Mr. Wallace as postmaster at Queenscliff, stated his salary to be £350, omitting in this instance any mention of the additions thereto in the form of allowances, and Mr. Wallace remained in the 4th class. Mr. Wallace claims that by reason of his salary plus allowances, exceeding £350, he was entitled to be promoted to the work and status of the 3rd class. Mr. Wallace first made this claim on the 6th September, 1889, nearly five years after

the alleged grievance arose. The Public Service Board decided that Mr. Wallace's position and allowances were only temporary, and that he was not entitled to a permanent rise in status from the fact of his being temporarily in receipt of a special allowance.

The Reclassification Board, while not entering into the question of the legality of the Public Service Board's interpretation of the word salary, wishes to be careful not to further widen that interpretation. The Reclassification Board is satisfied on the documentary and oral evidence that Mr. Wallace's tenure of the office of postmaster at Queenscliff was only for the period of the absence on leave of another officer, and that Mr. Wallace clearly so understood. Therefore, according to the practice of the Public Service Board Mr. Wallace would not be entitled to have his allowances added to his salary.

The Reclassification Board determines that Mr. Wallace is not entitled as from a past date to be classified in a class higher than the 4th.

*"As to the claim of C. R. Long, Lecturer, Education Department, to payment of certain increments."*

Mr. C. R. Long was, on 4th October, 1890, appointed by the Governor in Council an inspector of schools of the 2nd grade, at a salary of £320 per annum, from 30th September, 1890. He therefore, under the Regulations then in force, became entitled to increments of £15, at intervals of one year, until he reached the maximum salary of £500.

On 16th December, 1890, the Public Service Board issued its certificate recommending the "transfer" of Mr. Long "to the position of lecturer at the Training Institution," and thereupon an Order in Council was made dated 13th January, 1891, by which Mr. Charles Richard Long, M.A., inspector of schools, 2nd grade, was "appointed" lecturer at the Training College, at a salary of £320 per annum, from 1st January, 1891, *vice* J. L. Robertson, M.A., transferred. This Order in Council does not purport to "transfer" Mr. Long from one office to the other; it makes him a lecturer in addition to being an inspector. It is, therefore, unnecessary to discuss whether the Governor in Council could consistently with the provisions and policy of the Public Service Acts by a simple Order deprive Mr. Long of his existing and accruing rights. It is alleged by Mr. Long that he was not aware that any such Order in Council was to be made. He says he was not informed that it had been made until four years afterwards.

The Reclassification Board determines that Mr. Long should be regarded as having been from 30th September, 1890, to the present time and as still being an inspector of 2nd grade under the Regulations in force on the date of his appointment, and that he has been and is entitled to the annual increments fixed by those Regulations.

*"As to claim of F. Tate, Inspector, Education Department, to payment of certain increments."*

Mr. Tate was, on the 19th February, 1889, appointed lecturer in the Training Institution at a salary of £320. The schedule of salaries of the Professional Division under the Regulations then in force referring to this office is as follows:—

Office.	Minimum Yearly Salary.	Scale of Additions.			Maximum Yearly Salary.	Remarks.
		Amount.	At intervals of—	Number.		
Inspectors, 2nd grade ... ..	£ 320	£ 15	One year ...	12	£ 500	Not more than one-third of the Inspectors (excluding Lecturers, Training Institution) to be in the 1st grade
Lecturers, Training Institution, ranking as inspectors, 2nd grade ... ..	320	15	One year ...	4	380	

Mr. Tate held the office of lecturer until July, 1895, when he was transferred to the position of inspector at his then salary of £380. Mr. Tate claims that by reason of the words "ranking as inspectors, 2nd grade," he held the position of inspector from the time of his appointment as lecturer, subject to this restriction—that so long as he was employed in the work of a lecturer his right to increments beyond £380 was suspended. The present Public Service Board took a different view; they regarded Mr. Tate's transfer to the duties of inspector in 1895 as a new appointment, bringing him under the reduced scale of salaries which had come into force between



his appointment as lecturer and his transfer to the office of inspector. The then Attorney-General (the Hon. I. A. Isaacs) expressed an opinion favorable to the view taken by the Public Service Board. On the other hand, it is clear from the evidence that the Public Service Board, who made the Regulation, intended it, the departmental officers who administered it interpreted it, and the officers affected accepted it, to bear the meaning contended for by Mr. Tate.

The Reclassification Board determines that Mr. Tate has a strong moral claim to be regarded as an inspector of the 2nd grade under the Regulations of 23rd December, 1890, and to be entitled to increments beyond £380 from July, 1895, when he exchanged from the duties of a lecturer to those of an inspector.

*"As to withdrawing the Order 'fixing' the salary of F. J. Edgar, Storekeeper, Pentridge."*

On 6th June, 1891, Mr. Edgar was appointed telegraph operator, 4th class. The salary of this office was "fixed" under Act No. 1133, section 24, at £216. Under section 60 of Act No. 1133, no officer shall be permanently appointed to any office in any penal establishment until he has served twelve months on probation. On 27th July, 1896, Mr. Edgar was appointed Storekeeper, 4th Class, Penal Establishment, Pentridge, salary £216 per annum, for twelve months on probation, from 16th June, 1896. At the time of his appointment, Mr. Edgar was informed that the "fixing" could not be taken off his salary until promotions with increases of salary were resumed. The appointment on probation was not confirmed, and therefore expired at the end of twelve months, *i.e.*, on 16th June, 1897. The result of this would be that Mr. Edgar would in effect be relegated to his former position as telegraph operator, 4th class, with salary "fixed" at £216, though, by departmental arrangement, he continued to act as storekeeper at Pentridge.

The Reclassification Board determines that Mr. Edgar is not entitled to have the "fixing" removed from his salary, as from a past date, but recommends that Mr. Edgar be now confirmed in his position as storekeeper at Pentridge. The effect of this will be to remove the fixing of his salary, and to entitle him to increments thereafter.

*"As to withdrawing the Order 'fixing' the Salary of T. M. Howden, Assistant Engineer, Mines and Water Supply Department."*

On 13th June, 1888, applications were invited from persons in the Public Service for the office of Assistant Engineer, Water Works, salary £240 to £360. On 24th June, 1889, the Public Service Board certified that there was no person in the Public Service duly qualified for appointment to the office. On the 22nd July, 1889, Mr. Howden, not an officer of the Public Service, was appointed to the office. The regulation at that time in force prescribed the salary and increments of the office as follows:—

Office.	Minimum Yearly Salary.	Scale of Additions.			Maximum Yearly Salary.	Remarks.
		Amount.	At Intervals of—	Number.		
Assistant Engineers—Water Supply ...	£ 240	£ 15	One year ...	8	£ 360	

On 6th May, 1890, less than ten months after Mr. Howden's appointment, this regulation was repealed, and the following salary and increments prescribed:—

Office.	Minimum Yearly Salary.	Scale of Additions.			Maximum Yearly Salary.	Remarks.
		Amount.	At Intervals of—	Number.		
Assistant Engineers—Water Supply ...	£ 240	£ Nil	...	...	£ 360	

On 19th March, 1891, the Public Service Board by regulation (approved by the Governor in Council 24th March, 1891) "fixed" Mr. Howden's salary at £260, thus applying to him the new regulation and depriving him of the scale of salary which was determined by the regulation in force at the time of his appointment.

The Attorney-General (the Hon. I. A. Isaacs) has advised that as Mr. Howden, previous to the termination of the first year of service, had only an inchoate right to the increment—a right which might be increased, diminished, or abrogated by a new regulation—the repeal of the old regulation and the passing of the new in May, 1890, left him without any *legal* claim to increments.

But, whatever his legal position may be, the Reclassification Board must point out that such a retrospective regulation is quite contrary to the whole course of legislation relating to the Public Service. Each successive Act of Parliament, which repealed a previous one, most scrupulously preserved all rights acquired under the repealed Act. In like manner regulations are usually made to apply only to officers appointed, transferred, or promoted after such regulations have come into force.

The 76th section of the Act No. 773 provided that after the passing of that Act no officer should be dismissed from the Public Service, or suffer any other penalty in respect thereof, except for the causes or in the manner set forth in the Act. Yet this officer has been penalized to the amount of many hundreds of pounds by altering the scale of his salary after he had accepted office.

The Reclassification Board determines that Mr. Howden is in justice entitled to the fixed increments secured to him by the regulation in force at the time of his appointment.

*“As to withdrawing the Order ‘fixing’ the salary of A. B. Lang, Assistant Surveyor, Lands Department.”*

It appears from the evidence that at a time when the Public Service Regulations specified for Assistant Surveyors a salary of £270, rising *by prescribed annual increments* to £360, Mr. Lang was appointed by the Governor in Council to that office, his salary, however, being irregularly stated at £300. This irregularity seems to have arisen from the responsible officer of the Lands Department assuming that a recommendation of the Department as to the raising of the minimum salary to £300 would be carried out. After this appointment the Regulations were altered, and apparently under this altered Regulation Mr. Lang's salary was “fixed” at £300, and Mr. Lang is thus denied the increments which the previous Regulations gave him. Mr. Lang, however, though he had a conversation with the Surveyor-General about his position in 1891, took no effective means to have his case inquired into, and it is difficult after this lapse of time to learn with accuracy what facts were present to the minds of the Public Service Board and the departmental officers at the time of the transactions in question. Indeed, he seems to have rested satisfied with a promise by the Surveyor-General to recommend that his salary should be increased under the new Regulation. In writing to the Reclassification Board on 3rd September, 1898, Mr. Lang says—“I would also state that I put forward no claim to the difference in salary between what I have received and what I consider I have been entitled to in past years; if, in the opinion of your Board, I have been in fault in not drawing attention to the matter earlier, I am quite willing to forego whatever advantage might otherwise have accrued.”

Mr. Lang has now been promoted to the position of district surveyor, the salary of which office has been determined by the Reclassification Board at £378, rising to £432, and the Reclassification Board considers that this may be taken as fair reparation for any hardship Mr. Lang may have suffered in the past.

*“As to the transfer of G. F. McIntyre, Warder, Pentridge, from the Railway Department at a lower salary than he was entitled to.”*

In 1893-4 G. F. McIntyre was a porter acting as signalman in the Railway Department, at 7s. per day for six days per week, and uniform, with payment for Sunday in addition when required to be on duty. On 15th January, 1894, new rates of pay for warders came into force. They were—

For 4th grade	...	...	...	...	£112
Up to 1st grade	...	...	...	...	£130

These new rates were published in the *Government Gazette* on 19th January, 1894. On the 18th January, 1894, Porter McIntyre applied for transfer to the position of warder. On the 16th February, 1894, he again applied personally to the Inspector-General of Penal Establishments for transfer, and the Inspector-General gave a certificate of his fitness for the position of warder. On 10th December, 1895, Porter McIntyre was instructed to report himself at Pentridge, which he did, and commenced

duty as warder. On the 14th May, 1896, Warder McIntyre wrote to the head of his Department, through the Governor of Pentridge, referring to his transfer, stating that "When he applied his impression was that he would carry the same rate of pay he received in the Railway Department." This "impression" was not apparently the result of any communication from the head of his Department or any authorized officer. As a fact, his pay in the Railway Department in 1894, the year of his application for transfer, amounted to £110 3s. 3d., and in 1895, the year of his transfer, to £109 11s., while his pay in the Penal Department was £112. Warder McIntyre now claims that he should have been paid at a former rate of warder's pay, viz., £135 per annum, from the time he went to Pentridge. But this rate had been abolished before he made his first application for transfer, a month before his second application, and nearly two years before his transfer.

The Reclassification Board determines that G. F. McIntyre, on his transfer from the Railway Department to the position of warder at Pentridge, was not entitled to any higher salary than he has received.

*"As to the removal of the 'fixing' of the salary of Leopold William Stach, an officer of the 4th class, Clerical Division, Education Department."*

In 1886 Mr. Stach was a 4th class officer, receiving a salary of £260. He was offered his present "office" at a "fixed" salary of £300. This he accepted in March, 1886, and thus at once obtained an advance of £40 per annum. The Act No. 1133, section 24, provides that the salary "fixed" shall be "the salary attached to such office without annual increment." Mr. Stach claims, nevertheless, to be entitled to "long-service increments." If he is so entitled, then the salary is not "fixed" and is not the "salary attached to such office." The salary attached to such office would be £300, rising by long-service increments to £350. Section 23 of the Act provides that each class shall have the minimum and maximum salary and the annual increments thereto mentioned in the Third Schedule. If the annual increments do not carry with them the long-service increments, then there is no authority in the Act for paying long-service increments. The Third Schedule provides that the increments shall be nine annual increments of £10 with two further increments of £25 each for long service, &c. Therefore, when the annual increments are barred, the further increments attached thereto must be also barred.

The Reclassification Board determines that Mr. Stach is not entitled to have the "fixing" of his salary removed or to receive long-service increments while he continues in his present office of Secretary to the Committee of Classifiers.

*"As to the claim of William Watson Hill, Sorter, General Post Office, to have increments."*

In 1881 Mr. Hill was an "Assistant Operator" at St. Arnaud, at a salary of £150. He was reported by the Postmaster there as being unequal to the duties of assistant operator, and he was therefore transferred to Ballarat Post Office, where he was employed as a sorter, though still graded and paid as assistant operator. He was repeatedly advised by the Deputy Postmaster-General to consent to being graded as a sorter. He declined, preferring to remain graded as an assistant operator, as he considered it the higher position. He remained graded as an assistant operator until the classification of the Service in 1884 when the Public Service Board classified him as a sorter of the 3rd grade, and he received the maximum salary of that grade—£150. On 1st July, 1890, he was promoted to be a sorter of the 2nd grade, at a salary of £162. His present claim is that he was appointed a sorter in 1881, and that under the Regulations then in force he was entitled to go by increments to £195 12s. 6d. This claim is completely negated by the evidence.

The Reclassification Board determines that Mr. Hill has no right to the increments he claims.

*"As to the claim of Miss C. Hosking, Teacher, Education Department, to higher classification from a certain date."*

Prior to the Classified Roll of State School Teachers of 30th June, 1891, Miss Hosking, who was assistant in School No. 1852, was in the 2nd sub-class of the Third class, and her school was in the 2nd class. By the classified roll above mentioned, her school was raised to the 1st class, and she in consequence to the 2nd class (by the operation of section 92 of the Public Service Act No. 1133). The Committee of

Classifiers, on the 22nd December, 1894, published a "corrigendum" of the roll of 30th June, 1891, by which Miss Hosking was placed in the 1st sub-class of the Third class. On the 6th May, 1896, the Committee of Classifiers cancelled this "corrigendum," being advised that it was illegal, and thus replaced the roll of 30th June, 1891, in its original condition. Under the "corrigendum" Miss Hosking would have been entitled under section 93 of the Public Service Act to be raised to the 2nd class with immediate increase of salary. Under the roll of June, 1891, she would have been entitled to the same class but with deferred increase of salary.

The conditions resulting from the "corrigendum" are, in this Board's opinion, in accordance with the spirit and intention of the Act, and are in accordance with the present practice of the classifiers; and the Reclassification Board determines that the necessary steps should be taken to validate the "corrigendum," and that Miss Hosking should receive the arrears of additional pay to which she would be entitled under it.

*"As to the claim of James Wilton Cooper, Government Printing Office, to higher classification from a certain date."*

Mr. Cooper was an officer of the 5th class, Clerical Division, in the Government Printing Office. On 11th March, 1892, a vacancy having occurred in the 4th class in the Customs Department, the Public Service Board by its certificate, addressed to the Commissioner of Trade and Customs, recommended Mr. Cooper for the vacancy. On 12th March, 1892, the Public Service Board informed the Under-Treasurer that this certificate had been issued. On 15th March, 1892, the Under-Treasurer communicated this fact to the Government Printer. On 18th March, 1892, the Secretary for Customs wrote to the Public Service Board—"that in view of the proposed retrenchment it was intended to hold this certificate in abeyance for the present." On 25th March, 1892, the certificate was returned to the Public Service Board at its request. On 29th March, 1892 Mr. Cooper was informed of this. The certificate of the Public Service Board has never been acted upon by the Governor in Council.

Mr. Cooper states that after his nomination by the Public Service Board he was detained in the Government Printing Office in consequence of pressure of work, and he contends that this delay had the effect of depriving him of his promotion. But this contention is not borne out by the documentary evidence. The papers show that only three days elapsed between the date on which the Government Printer was informed of Mr. Cooper's nomination and the date of the letter intimating that the nomination was to be held in abeyance. It is clear that the non-promotion of Mr. Cooper was "in view of proposed retrenchment," and not from any delay in allowing him to commence duty in the Customs Department.

The Reclassification Board determines that Mr. J. W. Cooper has not established his claim to higher classification as from a certain date, viz., March, 1892.

*"As to the claim of Miss M. L. Saunders, Postmistress, Post Office Department, to be classed as Postmistress from a certain date."*

In 1882 Miss Saunders was Postmistress at Donald, at a salary of £84 with quarters. Miss Burns was "Female Assistant," employed on the Relieving Staff, at a salary of £80 with travelling expenses. There was no grade of Relieving Postmistresses at that time. The duties were done by a staff of Female Assistants, of whom Miss Burns was one, and who were referred to in the Department as "the Relieving Staff." On 17th November, 1882, Miss Saunders applied by letter for leave "to make an exchange with Miss C. E. Burns, who is at present on the Relieving Staff." On 18th November Miss Burns applied by letter "for an exchange of positions between Miss Saunders and myself." This exchange was carried into effect on the 11th December, 1882, and from that date onwards Miss Saunders signed receipts for her salary as Female Assistant, G.P.O.

Miss Saunders continued on the Relieving Staff up to the time of the first classification by the Public Service Board in 1885, when she was classified as a Female Operator. She remained on the Relieving Staff until 1886, and on 10th August in that year was classified by the Public Service Board as a Relieving Postmistress at a salary of £96. Any loss of seniority or status which Miss Saunders has incurred is simply the result of her having voluntarily exchanged positions with Miss Burns, a Female Assistant, in 1882.

The Reclassification Board determines that Miss Saunders has not sustained her claim to be classified as a Postmistress from any date prior to 1886.

*“As to the claim of R. Yorke, Overseer of Works, Pentridge, to be paid the salary and increments he would have been entitled to receive had he remained an Inspector of Works in the Public Works Department.”*

In 1893 Mr. Yorke was an Inspector of Works—2nd grade—in the Public Works Department, receiving a salary of £234, and according to the regulations then in force entitled to go by yearly increments of £6 to £276. On 1st July, 1893, he was appointed Overseer of Works and Buildings at Penal Establishment, Pentridge, at £234 (without quarters). The salary of that office was, according to the regulations then in force, £210 to £252. In 1894 quarters were provided for Mr. Yorke, for which, with allowances of fuel, &c., he was charged £32 per annum. His net salary was then made £220, which, with quarters and allowances, was brought up to a gross salary of £252.

Apart from the question of deduction from salary for quarters, &c., the Reclassification Board finds that Mr. Yorke has not lost financially by his transfer to his present office.

As to the deduction for quarters, Mr. Yorke urges that his work is onerous and responsible, and that, therefore, he should have his quarters free. The Reclassification Board does not, as to the past, see any good reason for departing from the usual practice of charging for quarters.

The Reclassification Board determines that Mr. Yorke has not sustained his claim to be paid any greater salary or increments in the past than he has already received, but recommends that, with a view to placing him in the future in a position as to emoluments equivalent to that which he would now occupy had he continued an Inspector of Works, he be paid the maximum salary attached to his office, as classified by this Board, viz., £240 with free quarters.

*“As to the claim of William Burston, Teacher, Education Department, to be classified, as from a certain date, in a higher class, and as to his claim to appointment as an Assistant in a certain school.”*

Mr. Burston was first male assistant of School No. 1402, Errol-street, North Melbourne. A question arose as to Mr. Burston's right to certain promotion, and was dealt with by the then Minister of Public Instruction, Dr. Pearson. Subsequently, some difficulty being suggested as to the carrying out of the Minister's order, it was proposed to Mr. Burston that he should withdraw his claim under that order, that a Board should be appointed to deal with the matter, and that Mr. Burston should undertake to abide by the decision of such Board. To these conditions Mr. Burston assented. On 12th December, 1889, the Minister's order was cancelled, and, on 17th December, 1889, a Board was appointed consisting of Mr. C. F. Taylor, M.L.A., a practising barrister, Mr. G. Wilson Brown, an ex-Secretary for Education, and Mr. A. P. Akehurst, who had had long experience as a police magistrate—a Board well qualified to deal with the law, the facts, and the regulations and practice of the Education Department. That Board made its report (a copy of which is appended hereto) on the 18th April, 1890. The “monetary compensation” mentioned in the second clause of the report was assessed by the Education Department at £120, and that sum was placed on the Annual Estimates, but was afterwards withdrawn. The costs (£71 5s. 10d.) awarded by the Board were paid. On 13th May, 1890, the Secretary for Education, by direction of the Minister, forwarded a copy of the Board's report to the Committee of Classifiers, stating that it had been determined to accept the decision of the Board of Inquiry, and requesting the Committee “to carry out the recommendation contained in clause 6 of the report,” *i.e.*, for the appointment of Mr. Burston as head teacher of a school in Class III., Subdivision A, within 10 miles of Melbourne at as early a date as practicable. The Committee of Classifiers saw difficulties in the way of carrying out this recommendation. On the 24th December, 1891, after a debate, the Legislative Assembly passed the following resolution:—

“That in the opinion of this House the finding of the Board appointed to inquire into the cases of Messrs. Burston and McNab should at once be given effect to.”

The finding has not been given effect to.

The Reclassification Board determines—

That the State is in fairness bound to carry into effect as far as can now be done the decision of the above-mentioned Board of Inquiry, and also to make monetary reparation to Mr. Burston for the delay which

has occurred in the matter. Mr. Burston would have been appointed head teacher of a school in Class IIIA. in 1890, would, according to the usual course of promotion, probably have been raised to the 2nd class about 1894 or 1895, and would before the present time have reached the highest subdivision of that class. The Reclassification Board therefore recommends that the necessary legislative authority be obtained, and that the Governor in Council place Mr. Burston in the highest subdivision of the 2nd class under the new classification with seniority next below those teachers who have already reached that status. The Reclassification Board assesses the monetary reparation to Mr. Burston (including the sum of £120 fixed under the report of the Board of Inquiry) at £260.

Copy of report of Board of Inquiry referred to above—

*To His Excellency the Governor in Council.*

MAY IT PLEASE YOUR EXCELLENCY—

We, the undersigned, being the Members constituting the Board appointed by Order in Council, dated the 17th December, 1889, to inquire into and report upon the claims of Messrs. William Burston and Louis K. McNab to different positions to those which they now hold as teachers in the Education Department, beg to state, for the information of the Governor in Council, that we have completed the investigation of Mr. William Burston's case. Our report is furnished hereunder.

The Board has come to the conclusion—

1. That Mr. Burston should have been appointed to the first male assistantship in State School No. 1406, Yarra Park, which Mr. Robinson got.
2. That he is therefore entitled to a monetary compensation, based on the difference in the result percentage between State School No. 1402, Errol-street, North Melbourne, and the Yarra Park School No. 1406, up to the time when he would have got a 3rd class head teachership, which would probably have been (and for the purpose of arriving at a definite conclusion the Board fixes as) the 1st of May, 1888.
3. That during that time he would probably have been teaching extra subjects, such as he had previously taught, namely, algebra, euclid, mensuration, and bookkeeping.
4. That he should receive an amount equivalent to that which Mr. Robinson received for those subjects during the same period.

The Board further finds—

5. That Mr. Burston should have got a head teachership in a 3rd class school, probably during the first half of the year 1888, but which school that would have been it is impossible to decide.
6. That there is no evidence to show that Mr. Burston has suffered pecuniarily by not being so appointed, but is of opinion that, as he did not obtain the head teachership when he should have got it, he is entitled to *special consideration* for appointment as head teacher of a school in Class III., Subdivision A., within ten (10) miles of Melbourne at as early a date as practicable.

The Board also recommends—

That he be allowed the sum of Seventy-one pounds five shillings and tenpence (£71 5s. 10d.) for costs.

Given under our seals at Spring-street, Melbourne, this 18th day of April, 1890.

(Sgd.)	CHARLES F. TAYLOR, Chairman of the Board.	(L.S.)
(Sgd.)	A. P. AKEHURST.	(L.S.)
(Sgd.)	G. WILSON BROWN.	(L.S.)

*“As to the claim of P. Hourigan, a Clerk in the Department of Lands and Survey, to be classified from a certain date in a higher class.”*

In 1889 Mr. Hourigan was an operator in the 5th class, Clerical Division. In December of that year certain postmasterships of 4th class, Clerical Division, were vacant. Applications for these offices were made by several officers, and on 28th January, 1890, Messrs. Traversi and Mardling, who were applicants, were appointed to two of these vacant positions. Mr. Hourigan was not an applicant. On 13th March, 1890, Mr. Hourigan applied for the position of relieving postmaster, and was appointed to that office on 4th June, 1890. Mr. Hourigan now alleges that he should have been appointed to one of the vacancies to which Messrs. Traversi and Mardling were appointed—he being senior to them, according to the official order of seniority. It was the practice of the Department to send notice to all officers eligible for vacancies, asking each whether, in the event of his seniors declining, he would accept the vacant appointment. Such a circular was sent in this instance, but the evidence as to whether a copy was sent to Mr. Hourigan is conflicting. According to the responsible officer of the Post Office the circular was sent to him. He did not reply by letter, was communicated with personally, and declined. And the official

entries made at the time bear out this statement. On the contrary, Mr. Hourigan says he received no circular, and did not decline. Mr. Hourigan now claims to be put in the 4th class, with seniority over Messrs. Traversi and Mardling, with increments and back pay, as if the offices in question had been offered to him.

It does not appear to the Reclassification Board very material whether this circular was sent to Mr. Hourigan or not. The practice of sending notices of vacancies, however convenient and useful, was not required by any statute or regulation, and to allow an officer to base a legal claim to compensation on any mere slip in carrying out this practice would be unreasonable. The vacant offices were not filled up for a month after they became vacant, and Mr. Hourigan had all that time to apply if it was to his interest to do so. On 10th October, 1892, Mr. Hourigan was offered the position of postmaster at Rutherglen, but declined it for the reason, as he stated to this Board, "that his mouth would then have been shut for ever as to his seniority." This is the post which Mr. Traversi (one of the officers of whose promotion he complains) now holds.

The Reclassification Board determines that Mr. Hourigan's claim to be classified as from any past date in a higher class than the 5th has not been sustained.

A. W. CHOMLEY, Chairman.

J. H. TAYLOR,  
WM. DAVIDSON, } Members.

C. J. CERUTTY, Secretary.

Office of Reclassification Board, 21st June, 1900.

