

Public Works (1898) Department.

RAILWAY BRANCH.

G.O., No. 1357. *Ly.*

DATED 3<sup>rd</sup> Nov<sup>r</sup> 1898

*120*  
*6*

*presented to P. C.*  
*3/11/98*

[Despatch Abstract.]

*Reserved Compartment*  
*Comm<sup>g</sup>. to the Agent, M.Ry, letter from*  
*the Govt of India passing orders on the*  
*question whether or not it is necessary to*  
*make a new rule with a view to ensure*  
*that a —, of a class higher than the lower,*  
*shall not be entered by persons for*  
*whose use it has not been reserved.*

BACK PAPERS.

RAILWAY.

Government (1898) of Madras.  
PUBLIC WORKS.

*Recd.*

Regd.

} 1898.

*Enclosures*

*Spare copies*

G.O., No. 1357 Ry., 3rd November 1898.

NOVEMBER.

Reserved Compartment

## GOVERNMENT OF MADRAS.

## PUBLIC WORKS DEPARTMENT.

## Railway.

Read the following papers:—

From—The Agent and Manager, Madras Railway.  
To—The Consulting Engineer for Railways, Madras.  
Dated—26th February 1898, No. 10508/A. 175.

I have the honour to forward herewith copy of a letter from the Company's Traffic Manager with its enclosures, on the subject of reserved accommodation for ladies or gentlemen in railway carriages on Indian Railways when the full fares per compartment are not paid; and shall be obliged if you will be so good as to forward them to the Government of India, with a request that the rule suggested by the Company's solicitors (*vide* enclosure E) may be authorised and made applicable to the Madras Railway.

## ENCLOSURE No. A.

From—The Traffic Manager, Madras Railway Company.  
To—The Agent and Manager, Madras Railway Company.  
Dated—23rd February 1898, No. C. 52952/31509.

*Reserved accommodation for ladies or gentlemen in railway carriages on Indian Railways, when the full fares per compartment are not paid.*

You are aware that it is our practice to reserve a first or second class compartment for ladies travelling by mail trains, on application, and that the Indian Railway Act compels us to provide similar accommodation for third-class female passengers. In a correspondence I have had with Messrs. Barclay, Orr and David, our lawyers have stated their opinion that there is nothing in the Indian Railway Act which prevents a first-class passenger of either sex from travelling in any compartment of that class, however reserved, unless the full fares, according to the capacity of the compartment, have been paid by the persons travelling in it.

The opinion is also expressed that section 119 would not apply to a first-class male passenger who entered a first-class ladies compartment, but that it is only intended to apply to the case of third-class female reserved accommodation compulsorily provided under the Act.

It would therefore seem that certain additional rules are necessary, and Messrs. Barclay, Orr and David have drafted the accompanying rule which they suggest should be submitted to the Government of India for publication in the *Gazette of India*, either applying to the Madras Railway only or to railway administrations generally, as may be thought best.

A copy of Messrs. Barclay, Orr and David's letter, dated 7th February, a copy of this office letter dated 11th, and a copy of their letter dated 14th instant, enclosed herewith, will explain the position of the case; and I shall be obliged if you can see your way to ask for the proposed rule to be sanctioned as applicable to the Madras Railway.

## ENCLOSURE No. B.

From—Messrs. BARCLAY, ORR and DAVID, High Court, Madras.  
To—The Traffic Manager, Madras Railway Company.  
Dated—7th February 1898.

We are in receipt of your letter of the 4th instant, No. C. 52952, with copy of the general rules for open lines of railway.

2. The difficulty with regard to the question as to whether a railway administration has the right to reserve a particular compartment for either ladies or gentlemen unless, of course, reserved accommodation is paid for by a passenger, arises from the provision of the Railway Act. In considering these provisions we, of course, leave out all references to section 64 of the Act which imposes a duty on railway administrations.

3. Section 63 provides that every railway administration shall fix the maximum number of passengers, which may be carried in each compartment of every description of carriage and shall exhibit the number so fixed in a conspicuous manner inside and outside each compartment.

4. Section 66 (1) provides that every person desirous of travelling on a railway shall, upon payment of his fare, be supplied with a ticket specifying the class of carriage for which the fare has been paid. Then section 67 (1) provides that fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train, *i.e.*, any part of the train not specially reserved on payment, for which the tickets are issued.

5. Reading these sections together it seems to us that *prima facie* an intending passenger who has paid his fare and obtained his ticket is entitled to enter and to travel in any compartment of the class for which he has paid his fare, provided that the number already in that compartment is not the maximum fixed under section 63. This opinion is strengthened by the provisions of section 68, which are that no person shall, without the permission of a railway servant, enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket, thereby implying that provided a person has with him a proper pass or ticket he may enter and travel in any carriage provided, of course, there is room in it for him.

6. Again, section 71 (1) provides that a railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1) clause (d), a person suffering from any infectious or contagious disorder; section 47 (1) (d) provides a Railway Company shall make general rules consistent with the Act for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders and rules have been made for this purpose, (*vide* Chapter II, Rules 7 and 8) and one of the conditions under which a passenger suffering from any such disease will, under these rules, be carried in any train is that he has engaged a reserved compartment for himself and his attendants.

7. Section 47 (1) (b) provides that a Railway Company shall make general rules for providing for the accommodation and convenience of passengers and certain rules have been made for these purposes, but such rules do not provide for a Railway Company reserving special accommodation for either ladies or gentlemen.

8. Section 109 of the Act imposes a penalty on a passenger who, having entered a compartment which is reserved for the use of another passenger (*i.e.*, on payment) or which already contains the maximum number of passengers exhibited therein or thereon under section 63, and also on a passenger who resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting and not already containing the maximum number of passengers. Both these sections clearly refer to a compartment reserved for an individual passenger and not for a class of passengers. There is, of course, nothing to prevent a Company reserving a compartment for an individual or several individual passengers on payment, or under section 68 without payment or ticket with the permission of a railway servant; but this is a very different thing from reserving a compartment for all passengers of one or other of the sexes.

9. It seems to us that, as the Act provides certain circumstances mentioned in sections 68 and 71 under which an intending passenger shall not enter a railway carriage, it must be inferred that, unless such circumstances apply to such a passenger, he has a right to enter and travel in any carriage (or compartment) of the class for which he has paid his fare and in which there is room for him. Were this otherwise, we think rules would have been made empowering a railway administration to reserve compartments for either ladies or gentlemen or any other special class of passengers.

10. We do not think it would be safe, in considering this question, to rely in any way on the practice of Railway Companies in England, for they are governed by laws not in force here. For instance under 31 and 32 Vict., C. 119, the Regulation of Railways Act, 1868, section 20, all Railway Companies, except the Metropolitan Railway Company, are bound to provide smoking compartments for each class of passengers in every train where there are more carriages than one of each class, unless exempted by the Board of Trade. There is nothing however to prevent any passenger from travelling in a smoking compartment. There is no law in India which obliges a railway administration to provide smoking compartments in its trains.

11. No doubt you are perfectly right in saying that there was no wish on the part of Government that the contract of Guaranteed Railways should be interfered with when the rules were revised, nor are such contracts interfered with if our view of the question is correct. The law gives an intending passenger certain rights on his entering into a contract with a railway administration to be carried on its railway but, unless authorised by its sanctioned rules to do so, the railway administration cannot impose a condition on such passenger which will take from him the rights the law gives him.

12. While therefore we see no objection to your labelling a compartment "For ladies only" or "For gentlemen only;" we are nevertheless of opinion that any passenger, who has paid his fare to travel in a compartment of the class of that so labelled and who is not suffering from an infectious or contagious disorder, has a right to enter and cannot be prevented from entering such compartment provided it is not full.

13. We return the book of rules you sent us and will only add that in this letter the word "passenger" applies to both sexes.

## ENCLOSURE No. C.

From—The Traffic Manager, Madras Railway Company.  
To—Messrs. BARCLAY, ORR and DAVID, High Court, Madras.  
Dated—11th February 1898.

Your letter of the 10th instant.

Unfortunately, in my letter of the 9th instant, section 109 was inadvertently stated instead of section 119, and the point I wished to draw attention to was that in section 119 it is clearly laid down that any male person entering a compartment knowing it to be reserved for the exclusive use of females (and I suppose I am safe in assuming that a lady is a female) may be subjected to a fine to the extent of Rs. 100, &c. It may be contended that section 119 only refers to the reserved compartments for females travelling in the lowest class of carriage forming part of the train; but section 119 does not mention section 64, nor does it mention any class, from which the non-professional mind arrives at the conclusion that any first-class male passenger who did enter a ladies' compartment, even of the same class, would be liable to a penalty under section 119 in the event of the case being proved against him. Will you kindly favour me with your opinion on this view of the case.

2. It may be desirable to frame a rule which would permit the Madras Railway to reserve a compartment or compartments in any train, without payment for the maximum number of berths or seats per compartment, for persons of either sex, for submission to the Governor-General in Council for sanction and publication in the Government Gazette; and in that case I shall be glad if you will kindly draft me such a rule as briefly as may be consistent with its lucidity.

## ENCLOSURE No. D.

From—Messrs. BARCLAY, ORR and DAVID, High Court, Madras.  
To—The Traffic Manager, Madras Railway Company.  
Dated—14th February 1898.

We are in receipt of your letter of 11th instant, No. 52952/C.

2. We do not think that the provisions of section 119 of the Indian Railways Act, 1890, affect the question. If there were any provision in the Act except section 64, or in the rules which empowered the Company to reserve accommodation for any particular class of passengers, then, section 119 would apply to a male person entering a carriage which he knows to be reserved for females. But section 119 must, we think, be read with section 64 which imposes a duty on every railway administration to reserve, for the exclusive use of females, one compartment at least of the lowest class of carriage forming part of a train. Without section 64 section 119 would have no meaning so far as carriages are concerned, and it is quite unnecessary that the former section should be mentioned in the latter. Section 64 provides that every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train, and section 119 provides that if a male person, knowing that such compartment is so reserved, enters it without lawful excuse, he shall be punished, &c. But except section 64, there is no authority for a railway administration reserving a carriage or compartment for females and there is no authority for a railway administration reserving a compartment for males.

3. Section 119 refers not only to carriages and compartments but to rooms and other places as well. A railway administration may, in our opinion, reserve a room or a latrine or other place for females or for males, because the provisions of the Act as to carriage of passengers and especially sections 66 and 67 do not apply to places. Our opinion is that those sections give a passenger who has paid his fare and obtained his ticket a right to enter and travel in any carriage in a train not reserved under section 64, provided there is room for him and provided he is not suffering from any infectious or contagious disorder; but those sections do not give him a right to enter any other place which may be reserved by the railway administration.

4. As requested we enclose, for approval, a draft rule to enable your Company to reserve a compartment or compartments in any train for persons of either sex. We have made the rule applicable to every railway administration, as probably the Governor-General in Council would be more likely to sanction the rule than if it were limited to your Company. However this can of course be altered if thought desirable.

## ENCLOSURE No. E. PROPOSED RULE.

The following rule is published in accordance with the Indian Railways Act, 1890.

Every railway administration shall be at liberty to reserve in any train carrying passengers one or more compartments of any class of carriage forming part of the train for the exclusive use of passengers of either sex without payment by them of any special rate or fare in excess of the ordinary fares for which such passengers may, respectively, be liable.

From—The Consulting Engineer for Railways, Madras.  
To—The Government Solicitor, Madras.  
Dated—3rd March 1898, No. 628.

I have the honour to request that you will obtain the opinion of the Honourable the Advocate-General, Madras, on the subject of the enclosed correspondence, viz., the Agent and Manager's Madras Railway letter, No. 10508/A. 175, and its original accompaniments.

2. The special point on which the Honourable the Advocate-General's opinion is desired, before a decision is come to whether a reference should be made to the Government of India, is whether or not it is necessary to make a new rule with a view to ensure that a reserved compartment, of a class higher than the lowest, shall not be entered by persons for whose use it has not been reserved.

From—The Government Solicitor, Madras.  
To—The Consulting Engineer for Railways, Madras.  
Dated—8th March 1898, No. 128.

With reference to your letter, No. 628, dated 3rd instant, I have the honour to inform you that I have obtained the opinion of the Acting Advocate-General on the question therein raised and now forward herewith copy of such opinion.

2. I return the enclosures to your letter under reference.

## ENCLOSURE.

Re the question whether or not it is necessary to make a new rule with a view to ensure that a reserved compartment, of a class higher than the lowest, shall not be entered by persons for whose use it has not been reserved.

*Opinion of the Advocate-General, Madras, dated 7th March 1898.*

I am of opinion that section 64 (1) of the Indian Railways Act, 1890, authorises a railway administration to reserve in any train carrying passengers one or more compartments for the exclusive use of females in the higher classes, though the section only makes it compulsory on the part of the railway administration to reserve at least one such compartment in the lowest class. If this be the right construction of section 64 (1), the railway administration is at perfect liberty to reserve compartments in the higher classes for the exclusive use of females, and the penalty provided by section 119 will be incurred by any male passenger entering without lawful excuse compartments so reserved. If the wording of section 64 (1) had been that every railway administration shall, in every train carrying passengers, reserve in the lowest class one compartment at least for the exclusive use of females, then in the absence of a rule framed under section 47 (1) (b) empowering a railway administration to reserve a compartment in the higher classes for ladies, section 119 would not apply, and under section 67 (1) a male person who has secured the proper ticket would be entitled to travel in such compartment if there be room in it, as contemplated by section 63 (b). But as I read section 64 (1) it provides that every railway administration is bound in every train carrying passengers to reserve for the exclusive use of females at least one compartment of the lowest class, thereby necessarily implying that a railway administration is at liberty to reserve, and may reserve a compartment or compartments in the higher classes or more than one compartment in the lowest class for the exclusive use of females. As the section now runs, the least that a railway administration ought to do in the matter of providing reserved accommodation for females is to set apart in the lowest class one compartment.

2. The power intended to be conferred on a railway administration by the proposed rule so far as it relates to females is already conferred on it by necessary implication by section 64 (1) of the Act itself. But if the intention is that a railway administration should also be at liberty to reserve compartments or carriages for males, such power will have to be given by a rule made under section 47 (1) (b), and in that case it will be well, in view to obviate a possible misconception which may result from restricting the rule to males, and also in view to place the existing practice of reserving compartments for ladies in the higher classes beyond the possibility of a doubt, to adopt the draft rule which relates to both sexes. I may point out that the draft rule as suggested would not enable a railway administration to reserve compartments for males or females of a particular nationality or race. Perhaps it is not intended that it should have such power, though sometimes I see compartments reserved for passengers of a particular nationality in the lowest class, and also in one of the higher classes.

From—The Consulting Engineer for Railways, Madras.  
To—The Agent and Manager, Madras Railway.  
Dated—Madras, 10th March 1898, No. 715.

In reply to your letter No. 10508/A. 175, dated the 26th February 1898, I have the honour to forward a copy of an opinion of the Acting Advocate-General on the question referred by you, and to say that I shall be prepared to receive any further suggestion which you may make after perusal of this opinion.

Meanwhile the matter has not been referred to the Government of India.

From—The Agent and Manager, Madras Railway.  
To—The Consulting Engineer for Railways, Madras.  
Dated—Madras, 24th March 1898, No. E. 729/257.

With reference to your letter No. 715, dated 10th March 1898, I have the honour to state that our Solicitors do not agree with the opinion given by the Acting Advocate-General of Madras, and it appears desirable therefore to have a firm ruling.

The rule suggested by the Solicitors, and sent to you with my letter of the 26th February, would undoubtedly get over the difficulty, but the rule to be effective must be specially sanctioned by the Government of India for adoption on the Madras Railway.

I enclose copy of the last letter we have received on the subject from our Solicitors.

ENCLOSURE.

From—Messrs. BARCLAY, ORR and DAVID, High Court, Madras.  
To—The Traffic Manager, Madras Railway Company.  
Dated—17th March 1898.

We are in receipt of your letter of 15th instant, No. C. 52952, with copy of the Acting Advocate-General's opinion on the question on which we have already advised you.

2. In his opinion the Acting Advocate-General says that section 64 (1) of the Indian Railways Act, 1890, authorises a Railway Administration to reserve in any train carrying passengers one or more compartments for the exclusive use of females in the higher classes. The Acting Advocate-General goes on to say that if the wording of section 64 (1) had been that every Railway Administration shall, in every train carrying passengers, reserve in the lowest class one compartment at least for the exclusive use of females, then in the absence of a rule empowering a Railway Administration to reserve compartments in the higher classes for ladies, section 119 would not apply, &c.

3. Section 64 (1) does provide that every Railway Administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train, and we must confess that we fail to see the difference between the wording of the section and the supposititious wording of the Acting Advocate-General, viz., every Railway Administration shall, in every train carrying passengers, reserve in the lowest class one compartment at least for the exclusive use of females. In both cases the words in the lowest class apply to the compartment and there is a mere transposition of words.

4. The Acting Advocate-General goes on to advise that, as he reads section 64 (1), it provides that every Railway Administration is bound, in every train carrying passengers, to reserve for the exclusive use of females at least one compartment of the lowest class, and as to this there can of course be no doubt, nor can there be any doubt that any female would have a right to travel in such reserved compartment; but, when the Acting Advocate-General goes on to say that the provisions of section 64 (1) necessarily imply that a Railway Administration is at liberty to, and may, reserve a compartment or compartments in the higher classes for the exclusive use of females, we entirely differ from him. The section imposes a duty on the Railway Administration to do a certain thing, but why that should imply a liberty for the administration to do another thing, we fail to see. Under section 64 (1), a Railway Administration can clearly reserve for the exclusive use of females as many compartments in the lowest class of carriage forming part of the train as the administration may consider necessary, but it must reserve one such compartment.

5. As to the reservation of compartments for the exclusive use of male passengers we see that the Acting Advocate-General concurs in the opinion we have expressed on that subject.

Order—No. 533 Ry., dated 5th April 1898.

The Government of India will be addressed.

From—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.  
To—The Secretary to the Government of India, Public Works Department.  
Dated—5th April 1898, No. 534 Ry.

I am directed to forward for the orders of the Government of India copies of the correspondence noted in the margin, on the subject of reserved accommodation for ladies or gentlemen in carriages on Indian Railways. The legal advisers of the Madras Railway, who are also Solicitors to this Government, consider that, in order to ensure that a reserved compartment higher than the lowest shall not be entered by persons for whose use it has not been reserved, it is necessary that a rule on the lines of the one drafted by them should be authorised by the Government of India and made applicable to the Madras Railway. The opinion of the Honourable the Advocate-General of Madras which has also been obtained is attached.

From—The Secretary to the Government of India, Public Works Department.  
To—The Joint Secretary to the Govt. of Madras, Public Works Dept., Ry. Branch.  
Dated—Simla, 5th May 1898, No. 470 R.T.

I am directed to acknowledge the receipt of your letter No. 534 Ry., dated 5th April 1898, forwarding for orders copy of correspondence on the subject of reserved accommodation on Indian Railways.

2. The legal advisers of the Madras Railway Company consider that in order to ensure that a reserved compartment higher than the lowest shall not be entered by persons for whose use it has not been reserved, it is necessary that a rule on the lines of the one drafted by them should be authorised by the Government of India.

3. In reply I am to state that the Government of India before passing orders on the point raised would be glad to be informed of the circumstances out of which this reference has arisen; more particularly whether any case has come before the Courts and been decided against the Railway Company.

From—The Agent and Manager, Madras Railway.  
To—The Consulting Engineer for Railways, Madras.  
Date—Madras, 4th August 1898, No. 10508/705.

With reference to your endorsement of the 18th May last on copy of letter No. 470 R.T. of the 5th idem, I have the honour to state that I cannot find that we have taken any cases under the sections in question into court, although we have from time to time had trouble both with men who persisted in travelling in compartments labelled for ladies, and with ladies who persisted in travelling in compartments with men, although a ladies' compartment was specially labelled and set apart for their use. We therefore ask that the rule which has been drafted by our lawyers may be gazetted in order to place the question beyond dispute.

Our lawyers have expressed the opinion that section 119 does not give us the power to eject a passenger, but that any male passenger can travel in a first or second class ladies' compartment without being liable to punishment, unless the full fares according to the capacity of the compartment have been paid. We are therefore now left in the unpleasant position of not being able to interfere with or proceed against any male passenger who chooses to travel in the ladies' compartment unless we take our own reading of the Act and test a case, or unless the Government of India relieve us through the Gazette.

Order—No. 1016 Ry., dated 10th August 1898.

The Government of India will be furnished with a copy of the Agent's (Madras Railway) letter No. 10508/705, dated the 4th August 1898.

From—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.  
To—The Secretary to the Government of India, Public Works Department.  
Dated—10th August 1898, No. 1017 Ry.

In reply to your letter No. 470 R.T., dated the 5th May 1898, I am instructed to forward a copy of a letter from the Manager, Madras Railway, No. 10508/705, dated the 4th August 1898, which furnishes the information asked for.

From—The Secretary to the Government of India, Public Works Department.  
To—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.  
Dated—Simla, 19th September 1898, No. 1007 R.T.

With reference to correspondence ending with your No. 1017 Ry., dated the 10th August 1898, in which the Madras Railway Company urge the issue of a statutory rule by the Government of India considered necessary by the legal advisers of the Company to ensure that a reserved compartment higher than the lowest shall not be entered by persons for whose use it has not been reserved by the Railway Administration, I am directed to observe as follows.

2. The argument of the solicitors of the Madras Railway Company rests on the assumption that all places not actually occupied or reserved, on payment or under the authority of a rule, must be regarded as available room, and that a person who forces himself into a compartment reserved by the railway administration is not liable to punishment under section 109 or 119 of the Indian Railways Act (IX of 1890) unless it has been reserved on the authority of some express provision of the Act as in the case of a lowest class compartment reserved for females under section 64 (1) or of a carriage reserved for a person suffering from infectious disease under a rule framed under section 47 (1) (d) in pursuance of section 71, or on payment for which tickets have been issued.

3. The Government of India, however, cannot see any substantial grounds for any of these assumptions, but consider that the question turns on the meaning of the words "subject to the condition of there being room available" in section 67, and the contractual right of a person who has paid his fare is subject to this condition. Room which has been reserved is not available, whether it has been paid for or not, and there is nothing in the Act which gives the intending passenger a right to go behind that fact and question and treat room which has been reserved otherwise than on payment, or in pursuance of some legal sanction, as available. If he has such a right the Government of India do not see why it should be valid only as against the Railway Company, and not also against persons who have engaged reserved accommodation the whole of which they do not occupy, thereby excluding persons who have also paid their fares. Apart from the fact that it has been reserved, room which is not occupied is "available room" whether it has been paid for or not, and there is no specific provision either in the Act or in the General Rules which entitles an individual to reserved accommodation on payment to the exclusion of other persons, any more than there is such provision entitling the Railway Administration to reserve accommodation at their own discretion otherwise than on payment. The wording of sections 109 and 119 also excludes any question as to the existence of a legal warrant for the reservation of the accommodation into which a person accused under these sections may try to force himself. If the compartment is reserved by the Railway Administration for the use of another passenger or for females only, and the offender knows that it has been so reserved, the offence is complete.

4. The Government of India also consider that the rule proposed by the legal advisers of the Madras Railway Company will not prevent cases of the kind from happening and will create more doubts than it would remove, and further that it is not open to the Railway Administration to insist that any one shall travel, unless suffering from an infectious disease, in a reserved compartment if he or she prefers to travel in the accommodation provided for the public.

5. Under these circumstances it does not appear necessary for the Government of India to frame statutory rules to enable Railway Administrations to take action which they are competent to take at their own discretion, until some case occurs to prove that such rules are indispensable.

ORDER—No. 1357 Ry., dated 3rd November 1898.

Communicated to the Agent and Manager, Madras Railway.

(True Extract.)

FRANCIS J. E. SPRING,  
Joint Secretary.

To the Agent and Manager, Madras Railway.

- " Agent, South Indian Railway.
- " Government Advocate-General.
- " Government Solicitor.
- " Judicial Department.
- " Consulting Engineer for Railways.

(No. L.)

5000-15-3-88.

No. 10508.

**MADRAS RAILWAY.**

AGENT AND MANAGER'S OFFICE,

MADRAS, 4th August, 188/98.

From

The Agent and Manager,

Madras Railway Company,

To

The Consulting Engineer for Railways.

SIR,

Madras.

With reference to your endorsement of the 18th May last on copy of letter No. 470 R.T. of the 5th idem, I have the honor to state that I cannot find that we have taken any cases under the Sections in question into Court, although we have from time to time had trouble both with men who persisted in travelling in compartments labelled for ladies, and with ladies who persisted in travelling in compartments with men, although a ladies' compartment was specially labelled and set apart for their use. We therefore ask that the rule which has been drafted by our lawyers may be gazetted in order to place the question beyond dispute.

Our Lawyers have expressed the opinion that Section 119 does not give us the power to eject a passenger but that any male passenger can travel in a 1<sup>st</sup> or 2<sup>nd</sup> class ladies' compartment without being liable to punishment, unless the full fares according to the capacity of the compartment have been paid. We are therefore now left in the unpleasant position of not being able to interfere with

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or proceed against any male passenger who chooses to travel in  
the ladies compartment unless we take our own reading of the Act  
and test a case, or unless the Government of India relieve us  
through the Gazette.

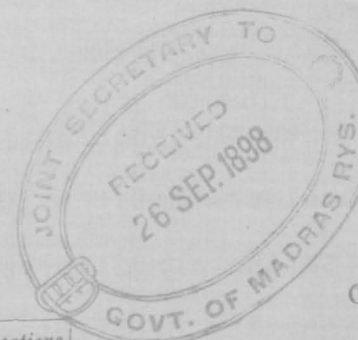
I have the honor to be,

Sir,

Your most Obedient Servant,

*Chandram*  
Agent and Manager.

*cle*



All communications  
should be addressed  
to the Secretary.

No. 1007 R.T.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

RAILWAY TRAFFIC.

To

The Joint Secretary to the Government of Madras,  
Public Works Department, Railway Branch.

Simla, the 19th September 1898.

Sir,

With reference to correspondence ending with your  
No. 1017 Railway dated the 10th August 1898, in which the  
Madras Railway Company urge the issue of a statutory rule  
by the Government of India considered necessary by the  
legal advisers of the Company to ensure that a reserved  
Compartment higher than the lowest shall not be entered by  
persons for whose use it has not been reserved by the  
Railway Administration, I am directed to observe as follows.

2. The argument of the solicitors of the Madras Railway  
Company rests on the assumption that all places not actual-  
ly occupied or reserved on payment or under the authority  
of a rule must be regarded as available room and that a  
person who forces himself into a compartment reserved by  
the Railway Administration is not liable to punishment  
under section 109 or 119 of the Indian Railways Act IX of  
1890 unless it has been reserved on the authority of some  
express provision of the act as in the case of a lowest  
class compartment reserved for females under section 64 (1)  
or of a carriage reserved for a person suffering from  
infectious disease under a rule framed under Section 47 (1)  
(d) in pursuance of Section 71, or on payment for which  
tickets have been issued.

MADRAS RAILWAY.

From

The Agent and Manager,

M. R. Co.,

To

The Consulting Engineer

for Railways.

Dated

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Recd.

3. The Government of India, however, cannot see any substantial grounds for any of these assumptions, but consider that the question turns on the meaning of the words "subject to the condition of there being room available" in Section 67, and the contractual right of a person who has paid his fare is subject to this condition. Room which has been reserved is not available, whether it has been paid for or not, and there is nothing in the act which gives the intending passenger a right to go behind that fact and question and treat room which has been reserved otherwise than on payment, or in pursuance of some legal sanction, as available. If he has such a right the Government of India do not see why it should be valid only as against the Railway Company and not also against persons who have engaged reserved accommodation, the whole of which they do not occupy, thereby excluding persons who have also paid their fares. Apart from the fact that it has been reserved, room which is not occupied is "available room" whether it has been paid for or not, and there is no specific provision either in the act or in the General Rules which entitles an individual to reserved accommodation on payment to the exclusion of other persons, any more than there is such provision entitling the Railway Administration to reserve accommodation at their own discretion otherwise than on payment. The wording of Sections 109 and 119 also excludes any question as to the existence of a legal warrant for the reservation of the accommodation into which a person accused under these Sections may try to force himself. If the compartment is reserved by the Railway Administration for the use of another passenger or for females only, and the offender knows that it has been so reserved, the offence is complete.

4. The Government of India also consider that the rule proposed by the legal advisers of the Madras Railway Company will not prevent cases of the kind from happening and will create more doubts than it would remove, and further that it is not open to the Railway Administration to insist that any one shall travel

unless

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unless suffering from an infectious disease, in a reserved compartment if he or she prefers to travel in the accommodation provided for the public.

5. Under these circumstances it does not appear necessary for the Government of India to frame statutory rules to enable Railway Administrations to take action which they are competent to take at their own discretion, until some case occurs to prove that such rules are indispensable.

I have the honour to be,

Sir,

Your most obedient servant,

*F. K. Upcott*

Secretary.

Documents accompanying:-

Nil.

S.A.

# Public Works (1898) Department.

Railway  
CURRENT No. 1115

Read again  
G.O. No. 533-4 R<sub>2</sub> dt 5.11.98.  
" " 1016-17 R<sub>2</sub> dt 16.8.98  
Read also  
P.W. R<sub>2</sub> CN: 1115 dt 26.9.98.

Order

From  
The Govt of India  
No. 1007 R.T.  
Order No. 1357. R<sub>2</sub> dated 3/11/98  
Communicated to  
the Agent and Manager  
Madras Railway.

F.R.S.

1/10/98

Dated 19.9.98  
Received } 26.9.98  
Registered }  
Enclosures  
Spare copies

Put lengthy into printed shape  
(including Notes) and send it with the  
above G.O. to Eng.

F.M.

1/10

The Agent Madras R<sub>2</sub> ✓

" " S.I. R<sub>2</sub> ✓

" " Smt. Advocate ✓

" " Smt. Solicitor ✓

" " Indian Dept ✓

" " Com. Secy. ✓

## SUBJECT.

Offering certain remarks on  
the request of the Madras R<sub>2</sub> Co.  
to issue a statutory rule to  
ensure that a reserved Comp-  
artment higher than the lowest  
shall not be entered by persons  
for whose use it has not been  
reserved by the Railway  
Administration.

M  
1.10.98

*[Signature]*

FURTHER PAPERS.