
STATUTORY INSTRUMENTS

2001 No. 3352

The Railway Administration Order Rules 2001

PART 5

THE SPECIAL RAILWAY ADMINISTRATOR

Fixing of remuneration

5.1.—(1) The special railway administrator is entitled to receive remuneration for his services as such.

(2) The remuneration shall be fixed either—

- (a) as a percentage of the value of the property with which he has to deal, or
- (b) by reference to the time properly given by the insolvency practitioner (as special railway administrator) and his staff in attending to matters arising in the administration.

(3) The remuneration of the special railway administrator may be fixed by a resolution of a meeting of creditors, determining both whether the remuneration is to be fixed under paragraph (2) (a) or (b) and, if under paragraph (2)(a), any percentage to be applied as there mentioned.

(4) In arriving at that determination, the meeting of creditors shall have regard to the following matters—

- (a) the complexity (or otherwise) of the case,
- (b) any respects in which, in connection with the protected railway company's affairs, there falls on the special railway administrator any responsibility of an exceptional kind or degree,
- (c) the effectiveness with which the special railway administrator appears to be carrying out, or to have carried out, his duties as such, and
- (d) the value and nature of the property with which he has to deal.

(6) If not fixed as above, the special railway administrator's remuneration shall, on his application, be fixed by the court.

(7) The court may, if it appears to be a proper case, order the costs of the special railway administrator's application to be paid as an expense of the railway administration.

(8) Where there are joint special railway administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court for settlement by order.

(9) If the special railway administrator is a solicitor and employs his own firm, or any partner of that firm, to act on behalf of the protected railway company, profit costs shall not be paid unless this is authorised by the court.

Recourse to the court

5.2.—(1) If the special railway administrator considers that the remuneration fixed for him by resolution of the creditors is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The special railway administrator shall give at least 14 days' notice of his application to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented, and to be heard, on the application.

(3) The court may, if it appears to be a proper case, order the costs of the special railway administrator's application, including the costs of any creditors appearing or being represented, to be paid as an expense of the railway administration.

Creditors' claim that remuneration is excessive

5.3.—(1) Any creditor of the protected railway company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the special railway administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for an *ex parte* hearing, of which he has been given at least seven days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

(3) The applicant shall, at least 14 days before the hearing, send to the special railway administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration.

Disposal of charged property, etc

5.4.—(1) The following applies where the special railway administrator applies to the court under section 15(2) of the 1986 Act for authority to dispose of property of the protected railway company which is subject to a security, or goods in the possession of the protected railway company under an agreement, to which that subsection relates.

(2) The court shall fix a venue for the hearing of the application, and the special railway administrator shall forthwith give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made under the said section 15(2), the special railway administrator shall forthwith give notice of it to that person or owner.

(4) The court shall send two sealed copies of the order to the special railway administrator, who shall send one of them to that person or owner.

Abstract of receipts and payments

5.5.—(1) The special railway administrator shall—

- (a) within 2 months after the end of 6 months from the date of his appointment, and of every subsequent period of 6 months, and

(b) within 2 months after he ceases to act as special railway administrator, send the requisite accounts of the receipts and payments of the protected railway company to the court, and to the registrar of companies except where the protected railway company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the Companies Act to deliver any documents to the registrar of companies.

(2) The court may, on the application of the special railway administrator, extend the period of two months mentioned above.

(3) The accounts are to be in the form of an abstract showing—

- (a) receipts and payments during the relevant period of 6 months, or
- (b) where the special railway administrator has ceased to act, receipts and payments during the period from the end of the last 6 month period to the time when he so ceased (alternatively if there has been no previous abstract, receipts and payments in the period since his appointment as special railway administrator).

[Form 12]

(4) The special railway administrator is guilty of an offence if he makes default in complying with this Rule and is liable on summary conviction to a fine not exceeding one fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

(5) In this Rule “the statutory maximum” means the prescribed sum under section 32 of the Magistrates Courts Act 1980(1).

Resignation

5.6.—(1) The special railway administrator may give notice of his resignation on grounds of ill health or because—

- (a) he intends ceasing to be in practice as an insolvency practitioner, or
- (b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of special railway administrator.

[Form 13]

(2) The special railway administrator may, with the leave of the court, give notice of his resignation on grounds other than those specified in paragraph (1).

[Form 14]

(3) The special railway administrator must give to the persons specified below at least 7 days' notice of his intention to resign, or to apply for the court's leave to do so,—

- (a) the Secretary of State;
- (b) the Authority;
- (c) any continuing special railway administrator of the protected railway company, and
- (d) if there is no such continuing special railway administrator, to the protected railway company and its creditors.

Special Railway Administrator deceased

5.7.—(1) Subject as follows, where the special railway administrator has died, it is the duty of his personal representative to give notice of the fact to the court, specifying the date of death.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

This does not apply if notice has been given under any of the following paragraphs of this Rule.

(3) If the deceased special railway administrator was a partner in a firm, notice of the death may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the court the relevant death certificate or a copy of it.

Order filling vacancy

5.8 Where the court makes an order filling a vacancy in the office of special railway administrator, the same provisions apply in respect of giving notice of, and advertising, the order as in the case of the railway administration order.