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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1845. 11 October 1974.

No. 1845. 11 Oktober 1974.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 43 of 1974: Railways and Harbours Pensions for Non-Whites Act, 1974.

No. 43 van 1974: Wet op Spoorweg- en Hawepensioene vir Nie-Blankes, 1974.

RAILWAYS AND HARBOURS PENSIONS FOR
NON-WHITES ACT, 1974.

Act No. 43, 1974

ACT

To provide for the payment of pensions and other retirement benefits to non-White servants in the Administration of Railways and Harbours and for matters incidental thereto.

*(English text signed by the State President.)
(Assented to 3 October 1974.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. In this Act, unless the context otherwise indicates— Definitions.
- (i) "actuary" means a Fellow of the Institute of Actuaries of London or of the Faculty of Actuaries in Scotland or any other person recognized as an actuary by the State President; (i)
 - (ii) "Administration" means the authority which, under the Railway Board Act, 1962 (Act No. 73 of 1962), administers and works the railways, ports and harbours of the Republic; (i)
 - (iii) "annuity" means an annual sum payable from the date of retirement up to the end of the month in which a retired servant dies; (xii)
 - (iv) "contributions" means the amounts paid in by a member of the Pension Fund, or a member of any other fund referred to in this Act or the regulations, as the context requires, but does not include interest; (iv)
 - (v) "foreign Bantu" means a Bantu who was not born in the Republic of South Africa or the territory of South West Africa; (xxvii)
 - (vi) "General Manager" means the officer appointed to be General Manager of the Railways and Harbours of the Republic, or any person lawfully acting in that capacity, and also an officer authorized by the Administration to perform any of the duties of the General Manager; (x)
 - (vii) "intermittent casual or togt labourer" means a non-White who is engaged from day to day for one day at a time, according to labour requirements, to undertake landing and shipping work at harbours; (xvii)
 - (viii) "Joint Committee" means the committee constituted under section 2; (ix)
 - (ix) "medical practitioner" means a medical practitioner duly registered as such under any law in force in the Republic or in South West Africa, relating to the registration of medical practitioners, or a medical practitioner duly qualified to practise under the law in force in any other country in which it is necessary to utilize the services of such a practitioner; (viii)
 - (x) "member" means any servant who is a contributor to the Pension Fund; (xiii)

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- (xi) "Minister" means the Minister of Transport; (xv)
 (xii) "non-White servant" means a servant exclusively employed by the Administration who is not a White person as defined in the Population Registration Act, 1950 (Act No. 30 of 1950), but excluding an intermittent casual or togt labourer and a foreign Bantu; (xvi)
 (xiii) "paymonth" means, in respect of a servant who occupies a salaried position, the period from the first to the last day of a month and, in respect of another servant, the period from the sixteenth day of a month to the fifteenth day of the succeeding month; (iii)
 (xiv) "Pensions Authority" means the Minister of Social Welfare and Pensions or any officer in the Department of Social Welfare and Pensions authorized by the said Minister to perform any of the functions assigned to him or to the Treasury by or under any law relating to pensions; (xx)
 (xv) "pension benefit" means any sum payable in terms of the provisions of this Act or the regulations; (xxi)
 (xvi) "Pension Fund" means the Railways and Harbours Pension Fund for Non-White Servants established under section 2; (xviii)
 (xvii) "pensionable emoluments" means the amount on which contributions are payable; (xix)
 (xviii) "prescribed" means prescribed by this Act or by regulation; (xxvi)
 (xix) "Railway Board" means the Railways and Harbours Board referred to in section 1 of the Railway Board Act, 1916 (Act No. 17 of 1916), and constituted as provided for in section 102 of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961); (xxiv)
 (xx) "regulation" means a regulation made and in force under this Act or any other Act conferring power to make regulations applicable to servants; (xxii)
 (xxi) "revenue" means the revenue paid into the Railway and Harbour Fund established under section 99 of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961); (xi)
 (xxii) "salary" means the annual pay of a servant who occupies a salaried position exclusive of allowances; (xxiii)
 (xxiii) "servant" means a non-White servant who is employed by the Administration in a casual capacity; (vi)
 (xxiv) "Service Act" means the Railways and Harbours Service Act, 1960 (Act No. 22 of 1960); (vii)
 (xxv) "superannuation" means the date of retirement due to attainment of the age fixed for retirement from the Service with a pension benefit; (xxv)
 (xxvi) "the Service" means the Administration of Railways and Harbours; (v)
 (xxvii) "wages" means the pay of a servant who does not occupy a salaried position exclusive of allowances; (xiv)
 (xxviii) "widow" means, in the case of a Bantu member, also a partner of a customary union, as defined in section 35 of the Bantu Administration Act, 1927 (Act No. 38 of 1927). (xxviii)

2. (1) The Railways and Harbours Pension Fund for Non-White Servants is hereby established. Establishment of Pension Fund and appointment of committees.
 (2) A Joint Committee on Pension Matters for Non-Whites and an Executive Committee shall be appointed and regulated in the manner prescribed.

3. (1) Notwithstanding anything to the contrary contained in any other law, the Minister, in consultation with the Railway Regulations.

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Board, may make regulations not inconsistent with this Act in respect of all or any of the following matters—

- (a) The mode of administering the Pension Fund and the form and manner in which the accounts thereof shall be kept;
- (b) the classes of persons who may become members;
- (c) the rate at which and the manner in which contributions shall be paid by a member;
- (d) the pensionable emoluments on which contributions to the Pension Fund shall be paid and on which the benefits payable shall be based;
- (e) the method of calculating and collecting contributions to the Pension Fund;
- (f) the form and the period of notice to be given by a member who is entitled to or claims pension benefits;
- (g) the benefits payable and the manner of calculation thereof;
- (h) the mode of payment of pension benefits;
- (i) the evidence of age or marital state to be required from any person or the evidence that may be required as to a member's death before benefits may be claimed;
- (j) the continuity of employment for the purpose of membership of the Pension Fund;
- (k) the procedure to be followed in regard to the retirement of a member from the Service before superannuation on grounds of permanent ill-health or physical disability;
- (l) membership of the Joint Committee and the Executive Committee;
- (m) the powers of the Joint Committee and the Executive Committee in connection with the administration of the Pension Fund and the procedure to be observed by the Joint Committee and the Executive Committee,

and generally for the efficient achievement of the objects and purposes of this Act, the generality of this provision not being limited by the matters specifically mentioned in this subsection.

(2) Any matter relating to the Pension Fund prescribed by regulation in terms of this section may be amended by the Minister in consultation with the Railway Board and any such amendment shall come into operation from a date to be specified by the Minister. Any regulation made in terms of this section and any amendment thereof may be made with retrospective effect from a date not earlier than the date on which this Act comes into operation.

4. A pension benefit shall be paid to the beneficiary stipulated in the regulations and such payment shall be calculated in terms of and effected subject to the provisions of such regulations. Pension benefits.

5. No pension benefit from the Pension Fund, or right to such a benefit, or right in respect of contributions made by a member or on his behalf shall be capable of being assigned or transferred, or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, and in the event of the beneficiary attempting to assign, transfer, or otherwise cede or to pledge or hypothecate a pension benefit or right, payment of the same may be withheld, suspended, or entirely discontinued, if the General Manager so determines: Provided that the General Manager may direct the payment of such pension benefit or of any benefit in pursuance of such contributions or part thereof to any one or more of the depen- Pension benefits from the Pension Fund not assignable or executable.

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dants of the beneficiary or to a trustee for such dependant or dependants during such period as he may direct.

6. (1) If the estate of any person in receipt of an annuity from the Pension Fund is sequestrated or surrendered or assigned for the benefit of his creditors, payment of the annuity shall forthwith be discontinued: Provided that in any such case all or any part of the annuity shall be paid to or for the benefit of all or any of the following persons, namely, the annuitant, his wife or minor child, or failing a wife or minor child, to the mother of an illegitimate child or any child whether legitimate or adopted or illegitimate or other relative dependent on him: Provided further that if the payment is made to the annuitant, it shall be for his own personal use and may not in any way be attached or appropriated by the trustee in his insolvency or by his creditors, anything to the contrary notwithstanding in any law relating to insolvency.

How annuities from the Pension Fund affected by insolvency.

(2) Whenever payment of an annuity has been discontinued under this section, it shall be revived on rehabilitation of the annuitant, or on the setting aside of the sequestration of his estate, or on the claims of his creditors being satisfied, and he shall receive an annuity at the same rate and under the same conditions as before the sequestration, surrender or assignment, together with any arrears that may be due.

7. If a member—

- (a) is dismissed or ordered to resign from the Service on account of fraud or dishonesty; or
- (b) resigns or absconds from the Service in order to avoid dismissal or enforced resignation on account of fraud or dishonesty, or in anticipation of a disciplinary or a criminal charge involving fraud or dishonesty being laid against him; or
- (c) leaves the Service for any reason, or dies, before any loan or advance (other than a loan referred to in section 8) which had been made to him at his specific request by the Administration or from the Benevolent Fund referred to in section 34 of the Service Act, has been repaid in full,

Recovery of certain debts due to Administration from benefits payable to members on their dismissal or retirement.

the Administration shall have the right to recover from any benefit payable from the Pension Fund to such former member or his estate or to some other person in respect of his death, the amount of any loss, as determined by the Administration, which it may have sustained by reason of such fraud or dishonesty, or the unpaid balance of such loan or advance, as the case may be: Provided that the onus of proving that a member resigned or absconded for any reason mentioned in paragraph (b) shall be on the Administration.

8. If in any agreement between the Administration and a member, in terms of which the member purchases from the Administration any dwelling-house or in terms of which the member is to receive any loan from the Administration in order to acquire land for the purpose of erecting a dwelling-house thereon or to acquire or erect a dwelling-house or to discharge any bond over any land or dwelling-house owned by the member, it is provided that—

Application of pension benefits and other moneys in liquidation of debts to Administration in respect of dwelling-houses.

- (a) if for any reason the member retires from the Service on an annuity, the Administration may commute by a cash sum such portion of the annuity as may be necessary to liquidate any amount payable—
 - (i) under such agreement; or
 - (ii) in pursuance of any insurance entered into by the Administration in connection with the repayment of any amount under such agreement,

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which remains unpaid at the date of his retirement, the Administration may, upon the member so retiring, effect such commutation and apply such first-mentioned amount towards the liquidation of the amount so remaining unpaid; or

- (b) if for any reason the member resigns voluntarily or is ordered to resign or is dismissed or retired from the Service otherwise than on an annuity, or if the member dies before retirement from the Service, the Administration may apply any moneys due under this Act to him or his successor in title in respect of such property or of his interest in such property, towards the liquidation of any amount payable—

(i) under such agreement; or

(ii) in pursuance of any insurance entered into by the Administration in connection with the repayment of any amount under such agreement,

which remains unpaid at the date of his retirement, voluntary resignation, enforced resignation, dismissal or death, the Administration may, upon the member so retiring, voluntarily resigning or being so ordered to resign, dismissed or retired or upon his death, as the case may be, so apply the said moneys: Provided that the Administration shall not so apply out of moneys so due to any such successor an amount in excess of the amount which bears to the total amount so remaining unpaid the same proportion as the value of such successor's share or interest in the property bears, in the opinion of the Minister, to the value of the whole thereof: Provided further that no pension benefit payable to a widow shall be so applied.

9. (1) The moneys of the Pension Fund shall be vested in the Administration and shall be invested, separately from other funds invested by the Administration, with the Public Debt Commissioners subject to the provisions of this Act.

Administration
of the Pension
Fund.

(2) Any profit derived or loss incurred from the investments referred to shall be for the account of the Pension Fund.

10. (1) The Pension Fund shall be valued every five years by an actuary appointed by the Minister.

Periodical
valuation of the
Pension Fund.

(2) The actuary shall value the assets and liabilities of the Pension Fund and shall declare what surplus or deficiency appears on the same and shall state how such surplus or deficiency appears to have arisen.

(3) The actuary shall report to the Minister and shall in his report state the data and processes used in his investigation and valuation.

(4) A copy of the said report shall be laid upon the Tables of both Houses of Parliament within fourteen days after receipt thereof by the Minister if Parliament is in ordinary session or, if Parliament is not in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

11. (1) Notwithstanding the provisions of section 10, the Administration shall at intervals of not less than five years determine the anticipated income and expenditure of the Pension Fund on an economic basis with a view to relating income more closely to expenditure in order that the growth may be limited to a realistic rate.

Contributions
to the Pension
Fund by
Administration.

(2) On the last day of each month and after determining the ratio of its contribution to the aggregate of the contributions or interest, or both, paid into the Pension Fund by members during the month, the Administration shall pay into the Pension Fund the sums so calculated.

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(3) The Administration shall also pay into the Pension Fund from time to time any further amounts that may be necessary to maintain the Pension Fund in a sound financial condition.

12. (1) If a member is transferred without a break in his service to any other service for the benefit of the members whereof a pension or provident fund exists under any law relating to pensions administered by the Pensions Authority or by a Provincial Administration or the Administration of the territory of South West Africa, and he becomes a member of any such fund as from the date of his transfer and is permitted to contribute thereto in respect of his past pensionable employment under the Administration, he shall be entitled for pension purposes to reckon the whole period of his pensionable employment under the Administration as continuous with that of his pensionable employment in the service to which he is transferred: Provided that there shall be paid from the Pension Fund to the Pensions Authority or to the administration concerned, as the case may be, such amount as is required by the pension or provident fund of which such person becomes a member, and such person shall thereafter have no further claim on the Pension Fund.

Transfers to and from other services.

(2) If a person who is a member of a pension or provident fund established under any law relating to pensions administered by the Pensions Authority or by a Provincial Administration or the Administration of the territory of South West Africa, is transferred without a break in his service to the service of the Administration and becomes a member (as a condition of membership a medical examination shall not be required), he shall be entitled for pension purposes to reckon the whole period of his pensionable employment in the service from which he was transferred, as continuous with that of his pensionable employment under the Administration: Provided that there shall be paid from the pension or provident fund of which such person was a member, to the Administration for the benefit of the Pension Fund, such amount as is required by the Pension Fund, and thereafter such person shall have no further claim upon the pension or provident fund of which he was a member.

(3) For the purposes of subsection (2) the requirements of the Pension Fund shall be calculated at an amount equal to the amount of the contributions which would have been payable to the Pension Fund by the person transferred together with the amount which the Administration would have contributed if, during the period of his pensionable employment in the service from which he was transferred, he had been a member and had contributed to the Pension Fund in accordance with the appropriate scale of contributions from time to time in force under this Act or the regulations, and on the pensionable emoluments on which he was from time to time contributing to the pension or provident fund established for the said service, together with interest compounded annually at the average rate of interest on investments with the Public Debt Commissioners, which rate of interest shall be levied from the first day of the month following the date on which the rate of interest becomes known.

13. Nothing contained in this Act or in the regulations shall in any way affect the rights which a servant or his dependants may have to be paid compensation under any law relating to workmen's compensation, or in accordance with any such law as applied by section 17 of the Service Act in respect of an accident to the servant which arose out of and in the course of his employment, whether within or outside the Republic, and the amount payable under or in accordance with any such law shall not be reduced by reason of any payment that may be made to the servant or his dependants from the Pension Fund.

Servant's right to compensation under workmen's compensation legislation not affected.

14. (1) Any annuitant who holds an appointment in or is appointed to the Service shall be paid the emoluments or remuneration usually paid in respect of the office or post in which

Reappointment of annuitants.

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he is employed without regard to the annuity drawn by him and notwithstanding anything in any law contained such annuity shall not be subject to abatement unless in special circumstances the Minister otherwise directs. Such annuitant shall not be admitted to membership of the Pension Fund.

(2) If any annuitant is appointed under the Public Service Act, 1957 (Act No. 54 of 1957), to a position in the Public Service, as in that Act defined, the provisions of subsection (1) as to abatement of his annuity shall apply.

(3) In this section "annuitant" means any person in receipt of an annuity from revenue or from the Pension Fund.

15. The Minister may re-open and make any necessary adjustment in cases in which through some error or omission an injustice would otherwise be done to a servant who is a member or was qualified to become a member.

Minister may re-open certain cases.

16. The moneys of the Pension Fund shall be held by the Administration on behalf of the members, subject to the provisions of this Act or the regulations, and the Administration shall pay over such moneys of the said fund as are not immediately required to the Public Debt Commissioners as deposits available for investment under the Public Debt Commissioners Act, 1969 (Act No. 2 of 1969).

Investment of funds.

17. The business of the Pension Fund shall be conducted by means of the staff of the Administration, and the cost of administering that fund and of any actuarial investigations and matters incidental thereto shall be borne by the Administration out of revenue.

How the Pension Fund shall be administered and the cost thereof paid.

18. This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.

Application of Act to South West Africa.

19. This Act shall be called the Railways and Harbours Pensions for Non-Whites Act, 1974, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Short title and commencement.