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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1847.

11 October 1974.

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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 geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 45 of 1974: Railways and Harbours Pensions Further Amendment Act, 1974.

No. 45 van 1974: Verdere Wysigingswet op Spoorweg- en Hawepensioene, 1974.

RAILWAYS AND HARBOURS PENSIONS FURTHER
AMENDMENT ACT, 1974.

Act No. 45, 1974

ACT

To substitute section 1 of the Railways and Harbours Pensions Amendment Act, 1941, so as to provide for new definitions; to amend sections 2, 4 and 5, to substitute sections 3, 7 and 8, and to repeal section 6 of the said Act so as to amend the conditions with regard to the payment of pension benefits, to simplify the calculation thereof and to eliminate cumbersome procedures; to insert a new section 8A in the said Act so as to apply the provisions thereof to South West Africa; and to provide 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. The following section is hereby substituted for section 1 of the Railways and Harbours Pensions Amendment Act, 1941 (hereinafter referred to as the principal Act):

“Defini-
tions.

1. In this Act, unless the context otherwise indicates—

- (i) ‘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)
- (ii) ‘annuity’ means an annual sum payable from the date of retirement up to the end of the month in which a retired servant dies; (viii)
- (iii) ‘emoluments’ means, in relation to a person in the service of the Administration, his salary or wages paid by the Administration; (ii)
- (iv) ‘foreign Bantu’ means a Bantu who was not born in the Republic of South Africa or the territory of South West Africa; (xvii)
- (v) ‘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; (v)
- (vi) ‘gratuity’ means a cash sum payable in terms of this Act; (iv)
- (vii) ‘Minister’ means the Minister of Transport; (x)
- (viii) ‘old Administration’ means—
 - (a) the Central South African Railways as existing prior to 31 May 1910, and includes the Imperial Military Railways and any Military Administration of the Railways in the Transvaal and the Orange River Colony;
 - (b) the Department of the Railways, Ports and Harbours of the Cape Colony;

Substitution of section 1 of Act 26 of 1941, as amended by section 2 of Act 6 of 1965 and section 2 of Act 85 of 1971.

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- (c) the Department of the Natal Government Railways;
- (d) the Department of the Ports and Harbours of Natal; (xi)
- (ix) 'pension benefit' means an annuity or a gratuity, according to the context; (xiii)
- (x) 'Pension Fund' means the Railways and Harbours Pension Fund for Non-White Servants or any pension or superannuation fund or scheme under any law, according to the context; (xii)
- (xi) '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); (xvi)
- (xii) 'regulation' means a regulation made and in force under this Act or any other Act conferring power to make regulations applicable to servants; (xiv)
- (xiii) '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); (vi)
- (xiv) 'salary' means the annual pay of a servant who occupies a salaried position, exclusive of allowances; (xv)
- (xv) 'the Service' means the Administration of Railways and Harbours; (iii)
- (xvi) 'wages' means the pay of a servant who does not occupy a salaried position, exclusive of allowances; (ix)
- (xvii) 'year' means a period of three hundred and sixty-five days. (vii)."

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- "(1) Any person who—
- (a) was in the service of the Administration at any time after the commencement of this Act; and
 - (b) was in the service of the Administration during a continuous period of five years or longer or intermittently during periods which amount in the aggregate to a period of five years or longer, or was in the service of the Administration and in the service of an old Administration (whether intermittently or continuously) during periods which amount in the aggregate to a period of five years or longer; and
 - (c) was, after the commencement of this Act, retired from the service of the Administration because of his age or because of a reduction or reorganization of the staff of the Administration or because of severe bodily injury in respect of which compensation is paid to him under any law relating to workmen's compensation or because of permanent ill-health or physical disability in respect of which a railway medical officer has not certified that it was occasioned by the said person's own default; and
 - (d) on the date of such retirement is not in respect of the period of service for which a benefit is claimed under this Act a member of, or participant in, any pension or superannuation fund or scheme under any law and is

Amendment of section 2 of Act 26 of 1941, as amended by section 6 of Act 23 of 1944 and section 3 of Act 6 of 1965.

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not otherwise qualified for a pension under any law in respect of such period; and

- (e) has never in respect of the period of service for which a benefit is claimed under this Act been eligible for membership of, or participation in, any such fund or scheme, or was refused admission to, or participation in, any such fund or scheme, although he was eligible for membership or participation,

shall, subject to the provisions of the Railways and Harbours Pensions for Non-Whites Act, 1974, and the regulations made thereunder, be entitled to an annuity or to a gratuity, to be paid from revenue, in accordance with the following provisions of this Act: Provided that in the case of a person who joins the Service on or after the date of commencement of the Railways and Harbours Pensions for Non-Whites Act, 1974, and is admitted to membership of the Pension Fund, no pension benefit in terms of this Act shall be payable in respect of the qualifying period, as defined in the regulations made in terms of the Railways and Harbours Pensions for Non-Whites Act, 1974."

3. The following section is hereby substituted for section 3 of the principal Act:

"Scale of annuities or gratuities.

3. (1) If a person mentioned in section 2 has served as aforesaid during any such period as is mentioned in paragraph (a), (b) or (c) of subsection (2), he shall, subject to the provisions of section 4 (3), be entitled to such benefit as is provided for in whichever of the said paragraphs is applicable in his case.

Substitution of section 3 of Act 26 of 1941, as substituted by section 2 of Act 62 of 1962.

(2) If such person, other than a person mentioned in section 2 (3), has served as aforesaid during a period of—

- (a) five years or longer, but less than fifteen years, he shall be entitled to a gratuity equal to three-eighths of his basic monthly emoluments at the date of his retirement in respect of each year of his service;
- (b) fifteen years or longer, but less than twenty-five years, he shall be entitled to an annuity, subject to the provisions of subsection (3), calculated on the basis of three rand fifty cents per annum in respect of each year of his service or, at the discretion of the General Manager, or any officer authorized by the General Manager, to a gratuity equal to one twenty-fourth of his average annual emoluments during the last ten years of his service, in respect of each year of his service;
- (c) twenty-five years or longer, he shall be entitled to an annuity, subject to the provisions of subsection (3), calculated on the basis of five rand fifty cents per annum in respect of each year of his service or, at the discretion of the General Manager, or any officer authorized by the General Manager, to a gratuity equal to one-sixteenth of his average annual emoluments during the last ten years of his service, in respect of each year of his service.

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(3) A foreign Bantu who retires from the Service for any of the reasons mentioned in section 2 (1) (c) shall not be entitled to an annuity, but only to a gratuity."

4. Section 4 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:

Amendment of section 4 of Act 26 of 1941, as amended by section 3 of Act 62 of 1962.

"(1) If a person has died while he was in the Service and he would, if he had, on the date of his death, been retired because of any fact mentioned in section 2 (1) (c), have been entitled to a pension benefit under this Act, the General Manager, or any officer authorized by the General Manager, may, in his discretion, pay a gratuity equal to three-sixteenths of his basic monthly emoluments at the date of his death in respect of each year of the deceased's service to or for the benefit of any dependant or dependants of the deceased whom such officer may indicate, and such officer may apportion the gratuity among two or more such dependants in such a manner as he deems equitable, and he may pay out the gratuity in such instalments as he deems desirable.";

- (b) by the substitution for subsection (3) of the following subsection:

"(3) If a person who is an annuitant under this Act, dies, his right to the annuity shall lapse; but the General Manager, or any officer authorized by the General Manager, may, in his discretion, pay a gratuity in such instalments as he deems desirable to the dependants of the deceased, calculated in accordance with the provisions of subsection (1) and reduced by the aggregate of all payments of an annuity which the deceased received under this Act prior to his death."; and

- (c) by the addition of the following subsection:

"(4) If a person who is entitled to a gratuity or portion of a gratuity under this Act, dies before payment can be made to him, his right to payment shall lapse, but the General Manager, or any officer authorized by the General Manager, may, in his discretion, make such payment to the dependants of the deceased. Such officer may apportion the amount among two or more such dependants in such a manner as he deems equitable, and he may pay it out in such instalments as he deems desirable."

5. Section 5 of the principal Act is hereby amended by the substitution for the word "pension", wherever it occurs, of the words "pension benefit".

Amendment of section 5 of Act 26 of 1941, as amended by section 31 of Act 44 of 1959.

6. Section 6 of the principal Act is hereby repealed.

Repeal of section 6 of Act 26 of 1941.

7. The following section is hereby substituted for section 7 of the principal Act:

Substitution of section 7 of Act 26 of 1941, as amended by section 4 of Act 6 of 1965.

7. The Minister may, in consultation with the Railway Board, make regulations not inconsistent with this Act or any other Act to provide for the

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different requirements of particular categories of servants and beneficiaries, and generally for the efficient achievement of the objects and purposes of this Act. Such regulations as well as any other regulations made in terms of this Act 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 regulations made in terms of this Act 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.”.

8. The following section is hereby substituted for section 8 of the principal Act: Substitution of section 8 of Act 26 of 1941, as amended by section 5 of Act 6 of 1965 and section 3 of Act 85 of 1971.

“Pension benefits cannot be ceded or attached in execution. **8.** The provisions of section 6 of the Railways and Harbours Pensions Act, 1971 (Act No. 35 of 1971), shall, in so far as they are applicable, apply *mutatis mutandis* in connection with a pension benefit or a right to a pension benefit under this Act.”.

9. The following section 8A is hereby inserted in the principal Act: Insertion of section 8A in Act 26 of 1941.

“Applica- **8A.** This Act and any amendment thereof shall tion of Act to South West Africa. apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”.

10. This Act shall be called the Railways and Harbours Pensions Further Amendment Act, 1974, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. Short title and commencement.