

No. 18, 1938.]

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

ACT

To amend the Railways and Harbours Service Act, 1912; the Railways and Harbours Regulation, Control and Management Act, 1916; the Railways and Harbours Service Act, 1925; and the Railways and Harbours Superannuation Fund Act, 1925.

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Amendment of section 78 of Act 28 of 1912. 1. Section *seventy-eight* of the Railways and Harbours Service Act, 1912, is hereby amended—

- (a) by the insertion after the words "to a pension" of the words "or right in respect of contributions made by a member or on his behalf"; and
- (b) by substitution for the words "nor shall the same or any contributions made by a member or on his behalf" of the word "or".

Amendment of section 3 of Act 22 of 1916, as amended by section 1 of Act 32 of 1920, section 2 of Act 31 of 1927, section 1 of Act 40 of 1930, and section 2 of Act 21 of 1931. 2. Section *three* of the Railways and Harbours Regulation, Control and Management Act, 1916, is hereby amended by the insertion of the following paragraph after paragraph (r) thereof:

“(r)*bis*. to acquire land for the erection of dwelling houses thereon, to acquire or erect dwelling houses and to sell, by way of hire-purchase or otherwise, or lease such houses to servants upon such conditions as the Minister may determine, to enter into agreements for the loan of moneys to servants for the purpose of acquiring land for the erection of dwelling houses thereon or of acquiring or erecting dwelling houses or discharging any bond over any land or dwelling house owned by a servant, and into agreements of insurance in connection with the repayment by a servant of any amount payable by him in pursuance of any such sale or loan, and to recover the amount paid and expenses incurred in respect of the insurance from the servant in such instalments as the Minister may determine, together with interest at the rate of three and a half per cent. per annum.”

Insertion of new section 72*bis* in Act No. 22 of 1916. 3. The following new section is hereby inserted in the Railways and Harbours Regulation, Control and Management Act, 1916, after section *seventy-two*:

“Exemption from payment of transfer duty.” 72*bis*. Notwithstanding anything in any law contained no transfer duty shall be payable by the Administration in respect of any property acquired by the Administration under paragraph (r) *bis* of section *three*, or by any servant in respect of any property acquired by him in pursuance of the provisions of the said paragraph.”

Insertion of new section 11*bis* in Act 23 of 1925. 4. The following new section is hereby inserted in the Railways and Harbours Service Act, 1925, after section *eleven*:

“Annuity on dismissal or order to resign.” 11*bis*. (1) If a member of the Fund, the 1912 pension fund or the New Fund, who has made contributions, which have been paid into any such fund, in respect of a period of at least twenty years, is dismissed from the service or ordered to resign, as a result of misconduct other than—

- (a) fraud or other serious misconduct of which dishonesty is an element;
- (b) deliberate mal-performance of work;

he may, notwithstanding anything in any other law contained, be granted by the Governor-General if he is dismissed or ordered to resign by the Gover-

nor-General, or by the Minister if he is dismissed or ordered to resign by any other person, in lieu of any other benefit payable from any such fund, such annuity, not exceeding one-half of the annuity which he could have claimed upon the date of his dismissal or resignation if his services had upon that date been dispensed with in consequence of a reduction in or reorganisation of staff, as the Governor-General or the Minister, as the case may be, may determine: Provided that—

- (i) for the purpose of determining such annuity no addition of any period shall be made to the period in respect of which such member has made such contributions;
- (ii) no portion of such annuity shall, except for the purposes of section *seventy-four bis* of the Railways and Harbours Superannuation Fund Act, 1925, be commuted by a cash payment; and
- (iii) all payments of any such annuity which are made before such member has attained the pensionable age, shall be made out of revenue, and all such payments which are made thereafter, shall be made out of any fund referred to in this sub-section of which the annuitant was a member at the date of his dismissal or resignation.

(2) If the whole of any annuity granted under sub-section (1) is commuted by a cash payment for the purposes of section *seventy-four bis* of the Railways and Harbours Superannuation Fund Act, 1925, the cash payment shall not be less than the aggregate of the contributions made by such member, which have been paid into any fund referred to in the said sub-section.

(3) Upon the decision of the Governor-General or the Minister, as the case may be, to grant to any person an annuity under sub-section (1), such person's right to any other benefit payable from any fund referred to in the said sub-section, shall lapse.

(4) If any person to whom an annuity has been granted under sub-section (1) dies before he has been paid by way of such annuity an aggregate amount equal to the sum of the contributions made by him which have up to the date of his dismissal or resignation been paid into any fund referred to in the said sub-section, the amount by which the said sum exceeds the said aggregate amount shall be disposed of as if the annuity had been granted to him on retirement at the pensionable age: Provided that if any portion of the annuity has been commuted by a cash payment for the purposes of section *seventy-four bis* of the Railways and Harbours Superannuation Fund Act, 1925, the said sum shall be deemed to be reduced in the proportion which the commuted portion of the annuity bears to the full annuity.

(5) If a member referred to in sub-section (1) is dismissed or ordered to resign by any person other than the Governor-General or the Minister, as a result of misconduct which does not preclude the grant of an annuity under the said sub-section, such person shall, when he dismisses such member or orders him to resign, submit to the Minister a recommendation as to whether or not such member should be granted an annuity, and notify such member of his recommendation.

(6) In this section the expressions "the Fund", "the 1912 pension fund" and "the New Fund" have the meanings respectively assigned to them in section *one* of the Railways and Harbours Superannuation Fund Act, 1925.

“ Payment on retirement in lieu of accumulated leave.

12. A servant whose services are dispensed with owing to abolition of office, reduction in or re-organisation of staff, or on the ground of superannuation, ill-health, bodily injury or physical disability shall, on retirement, be entitled to payment by the Administration of his emoluments in respect of a period of vacation leave due to him at the date of his retirement which, together with any period ending upon the said date during which he has been on vacation leave, does not exceed six months : Provided that the period in respect of which he shall be so entitled to payment shall, if he has, during the twelve months ending upon the said date, been on vacation leave for any other period in excess of three months, or for any other periods which in the aggregate exceed three months, be reduced by the extent of such excess.”

Amendment of section 21 of Act 24 of 1925.

6. Section *twenty-one* of the Railways and Harbours Superannuation Fund Act, 1925, is hereby amended—

- (a) by the insertion after the words “ to a pension ” of the words “ or right in respect of contributions made by a member or on his behalf ” ;
- (b) by the substitution for the words “ nor shall the same or any contributions made by a member or on his behalf ” of the word “ or ” ;
- (c) by the deletion in the Dutch version of the words “ op pensioen ” appearing before the words “ over te wijzen ” ; and
- (d) by the insertion after the words “ such pension ” of the words “ or of any benefit in pursuance of such contributions.”

Insertion of new section 74bis in Act 24 of 1925.

7. The following new section is hereby inserted in the Railways and Harbours Superannuation Fund Act, 1925, after section *seventy-four* :

“ Applica- tion of pen- sion and other moneys in liquidation of debts to Administra- tion in respect of dwelling houses.

74bis. If in any agreement between the Administration and a member of the Fund, the 1912 pension fund or the New Fund, in terms of which such member purchases from the Administration any dwelling-house or in terms of which such 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—

- (a) if for any reason such member retires or is dismissed or retired from the service on an annuity, the Administration may commute by a single amount such portion of the annuity (not exceeding the maximum amount thereof which may be commuted) 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, which remains unpaid at the date of his retirement or dismissal, the Administration may, upon such member so retiring or being so dismissed or retired, effect such commutation and apply such first-mentioned amount towards the liquidation of the amount so remaining unpaid ; or
- (b) if for any reason such member retires or is dismissed or retired from the service otherwise than on an annuity, or if such member dies before retirement from the service, the Administration may apply any moneys due to him or his successor in title in respect of such property or of his interest in such property, under this Act or the Workmen’s Compensation Act, 1934, 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, dismissal or death, the Administration may, upon such member so retiring or being so 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 moneys payable out of any widow's pension fund shall be so applied."

Sections 1, 2, 6 and 7 retrospective.

8. The provisions of sections *one, two, six and seven* shall be deemed to have come into operation upon the first day of August, 1938.

Short title.

9. This Act shall be called the Railways and Harbours Acts Amendment Act, 1938.