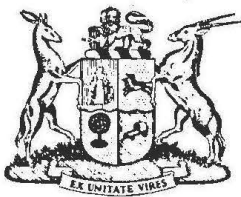


Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 496.

11 Maart 1981.

No. 496.

11 March 1981.

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

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

No. 29 van 1981: Wysigingswet op Spoorweg- en Hawewette, 1981.

No. 29 of 1981: Railways and Harbours Acts Amendment Act, 1981.

Act No. 29, 1981

RAILWAYS AND HARBOURS ACTS AMENDMENT ACT,
1981**BE IT ENACTED** by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Substitution for the word "servant" of the word "employee" in Act 26 of 1941.

1. The Railways and Harbours Pensions Amendment Act, 1941, is hereby amended by the substitution for the word "servant" of the word "employee" wherever it occurs. 5

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 and substituted by section 2 of Act 45 of 1974.

2. Section 2 of the Railways and Harbours Pensions Amendment Act, 1941, is hereby amended by the insertion after subsection (3) of the following subsection:

"(4) The provisions of subsections (1) and (2) shall apply *mutatis mutandis* in the case of any person who transferred from the South African Iron and Steel Industrial Corporation Limited, without a break in service, to the service of the Administration in consequence of the purchase of the Sishen-Saldanha Bay Project in terms of the Railway and Harbour Purchase Act, 1977 (Act No. 47 of 1977)." 10 15

Amendment of section 5 of Act 26 of 1941, as amended by section 31 of Act 44 of 1959 and section 5 of Act 45 of 1974.

3. Section 5 of the Railways and Harbours Pensions Amendment Act, 1941, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) In calculating the period of service of any person as a basis for a pension benefit under this Act (whether for himself or for his dependants), all separate periods, reckoned in days, during which that person was in the service of the Administration or of an old Administration or in the service of the South African Iron and Steel Industrial Corporation Limited in the case of any person referred to in subsection (4) of section 2 shall, subject to the provisions of subsection (2), be added together, and if the total period of his service amounts to a number of full years and a number of days less than a year, that number of days shall be taken into account as a corresponding fraction of a year." 20 25 30

Substitution of certain words in Act 22 of 1960.

4. The Railways and Harbours Service Act, 1960 (hereinafter called the "Service Act"), is hereby amended by—

- (a) the substitution, in the Afrikaans text, for the word "tug" of the word "disipline", the word "tugoortreding" of the words "dissiplinêre oortreding", the word "tugstappe" of the words "dissiplinêre stappe", the word "tugstraf" of the words "dissiplinêre straf", the word "tugaanklag" of the words "dissiplinêre aanklag", the word "tugappêlraad" of the words "dissiplinêre appêlraad" and the word "tugappelle" of the words "dissiplinêre appelle", wherever they occur; and 35 40
- (b) the substitution for the word "servant" of the word "employee" wherever it occurs.

Amendment of section 3 of Act 22 of 1960, as amended by section 46 of Act 6 of 1965, section 5 of Act 85 of 1971 and section 6 of Act 8 of 1976.

5. Section 3 of the Service Act is hereby amended by the substitution for paragraph (a) of the following paragraph: 45

"(a) a decision made under the provisions of this Act and the regulations governing the [servant] employee in regard to discipline [and inefficiency]; or"

Insertion of section 3B in Act 22 of 1960.

6. The following section is hereby inserted after section 3A of the Service Act: 50

"Administration may waive its right to recover certain debts. 3B. (1) Whenever any employee or former employee of the Administration has, in the ordinary course of, or arising out of, his employment with the Administration— 55

(a) received payment, whether in money or in kind, from the Administration in excess of what

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was legally due to him in terms of any law or any agreement, express or implied, governing his employment; or

(b) become indebted to the Administration (otherwise than under the circumstances mentioned in paragraph (a)) by virtue of any agreement, express or implied, with regard to any matter affecting or incidental to his employment, and through some error or omission on the part of the Administration or its employees, was not required to discharge or satisfy such indebtedness at the time when it arose, the Administration may, if it is satisfied that—

(i) the employee or former employee concerned acted in good faith and without knowledge that he was not entitled to receive such payment, or that he was indebted to the Administration as aforesaid; and

(ii) the case is one where the employee or former employee concerned should on equitable grounds be granted some relief, waive its right to recover the whole or any portion of the amount overpaid or outstanding, as the case may be, notwithstanding that such amount may be legally recoverable from the person concerned: Provided that the Administration shall not where the person concerned is still in the Service, waive its right under this subsection in respect of any amount which was overpaid during, or which became due in respect of, the twelve months immediately preceding the date on which the overpayment or the omission to discharge or satisfy the indebtedness, as the case may be, is officially brought to notice.

(2) Any reference to the Administration in paragraphs (a) and (b) of subsection (1), shall be deemed to include a reference to any Superannuation or Sick Fund controlled by the Administration.

(3) The Administration may, on such conditions as it may deem fit, delegate to the General Manager and to one or more other officers of the Administration, authority to exercise on its behalf the powers conferred upon it by this section.”

Substitution of section 10 of Act 22 of 1960.

7. The following section is hereby substituted for section 10 of the Service Act:

“Retirement on the ground of inefficiency.

10. (1) The services of an employee in permanent employment may be dispensed with prior to the date of his superannuation if he is found to be inefficient.

(2) If an employee in permanent employment is reported to be inefficient in such degree that consideration of his retirement on such ground is considered justified, he shall be informed accordingly in writing and offered the opportunity of submitting in writing, within thirty days after receipt of such notification, any comments he might wish to make for the information of the committee referred to in subsection (3).

(3) On receipt of the reply of the employee concerned or, should the employee fail to reply, upon the expiry of the period of thirty days referred to in subsection (2), the matter may be referred to a committee, which shall be constituted in such manner as may be prescribed by regulation.

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(4) The committee shall consider the matter and shall take into account the information laid before it together with any other information provided at its request. The committee shall thereupon make any recommendation that it might see fit as to the disposal of the matter, including a recommendation that the employee concerned be retired from the Service on the ground of inefficiency. 5

(5) An employee who is retired on the ground of inefficiency shall be paid the benefits that would have been paid to him had he been retired from the Service in accordance with the provisions of section 11." 10

Amendment of section 14 of Act 22 of 1960, as amended by section 11 of Act 62 of 1962, and section 5 of Act 8 of 1968, substituted by section 11 of Act 46 of 1975 and amended by section 11 of Act 8 of 1976.

8. Section 14 of the Service Act is hereby amended by the substitution, in subsection (1), for the words "section 12A" of the words "sections 10 and 12A". 15

Amendment of section 18 of Act 22 of 1960, as amended by section 8 of Act 7 of 1963, section 4 of Act 33 of 1972 and section 14 of Act 8 of 1976.

9. Section 18 of the Service Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

"(4) (a) No punishment shall be placed on record against [a servant] an employee unless he has been notified in writing thereof and the decision by virtue of which the punishment is imposed, shall be deemed to be given at the time when the [servant] employee is so notified thereof. 20 25

(b) If an employee is convicted on a criminal charge and the circumstances are such that although disciplinary action is not contemplated it is nevertheless considered desirable to place the infringement on the disciplinary record of the employee concerned, such infringement may, without disciplinary action being taken, but with written notification to the employee, be recorded. The decision to record the infringement shall be deemed to be given at the time when the employee is so notified thereof."; and 30 35

(b) by the deletion of subsection (7).

Amendment of section 19 of Act 22 of 1960, as amended by section 1 of Act 43 of 1960, section 9 of Act 7 of 1963, and section 5 of Act 54 of 1964, substituted by section 5 of Act 33 of 1972 and amended by section 12 of Act 67 of 1980.

10. Section 19 of the Service Act is hereby amended by the insertion after subsection 5 of the following subsection:

"(6) If an employee is sentenced to imprisonment for a period exceeding three months, such employee may, without the disciplinary code being applied, be deemed to have been dismissed from the Service as the result of an infringement of a serious nature from the date the imprisonment commences or from the date of suspension if he was suspended from an earlier date." 40 45

Amendment of section 20 of Act 22 of 1960, as amended by section 10 of Act 7 of 1963, section 6 of Act 54 of 1964, section 51 of Act 6 of 1965,

11. Section 20 of the Service Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) (a) A recorded punishment [of a caution or reprimand, or] of a fine not exceeding [four rand,] twenty-five rand and an infringement recorded in terms of section 18 (4) (b) [whether imposed before or after the commencement of this Act], shall be expunged from 50

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section 10 of
Act 47 of 1973,
section 9 of
Act 44 of 1974
and section 15 of
Act 8 of 1976.

the record of **[a servant]** an employee other than an apprentice unless within a period of **[three] five years** **[after] from** the date on which **[he was found guilty of the disciplinary infringement in respect of which such punishment was imposed,]** the infringement was committed, whether the infringement was committed before or after 1 August 1980, a further infringement has again been recorded against him **[a recorded punishment has again been imposed upon him]**: Provided that for the purpose of determining whether **[a servant]** 10 an employee who is a member of the South African Railways Police Force, as defined in section 57 of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957), is in all respects a fit and proper person who is eligible to be 15 awarded any medal or decoration which is customarily awarded, in the discretion of the Minister, to such **[servants] employees** in recognition of long and faithful service and exemplary conduct, any such punishment which has been so expunged may nevertheless be taken into account, and for that purpose 20 (but for no other) a memorandum thereof, separate from the **[servant's] employee's** service record, may be kept in such manner and subject to such safeguards as the General Manager may direct. 25

(b) Recorded punishments of a caution or reprimand, or of a fine of less than ten rand, that were recorded in the past, shall be expunged from the record of an employee.

[b] (c) All punishments imposed upon an apprentice 30 during the period of his apprenticeship and punishments recorded against him in terms of section 18 (4) (b), shall be expunged from his record upon his appointment as a technician.”

Amendment of
section 21 of
Act 22 of 1960,
as amended by
section 11 of
Act 7 of 1963,
section 7 of
Act 54 of 1964,
section 52 of
Act 6 of 1965
and section 16
of Act 8 of 1976.

12. Section 21 of the Service Act is hereby amended— 35

- (a)** by the deletion of subsections (4) and (5);
(b) by the substitution for subsection (7) of the following subsection:

“(7) In any case where the appeal board has reported its finding to a prescribed officer the servant 40 concerned may, if he is dissatisfied with the decision of the said officer on any matter referred to in paragraphs **(a)** and **(b)** of subsection (2) **[on which—**

- (a)** such decision is not in accord with the unanimous finding of the appeal board; or 45
(b) the finding of the said board has not been unanimous],

appeal further, in the manner prescribed, to the General Manager against such decision, and if he is dissatisfied with the decision of the General Manager, 50 he may, within fourteen days of the receipt of the decision, ask that the case be referred to the Railways and Harbours Board.”; and

- (c)** by the deletion of subsection (18).

Amendment of
section 22 of
Act 22 of 1960,
as amended by
section 12 of
Act 7 of 1963
and section 53
of Act 6 of 1965.

13. Section 22 of the Service Act is hereby amended by the 55 substitution, in subsection (1), for the words preceding paragraph **(a)** of the following words:

“(1) At an inquiry or appeal **[under section ten or]** under subsection (5) of section 20 or at an appeal under section 21 at which **[a servant] an employee** is entitled to be present, 60 he shall be allowed to have the assistance of either—”

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Amendment of section 32 of Act 22 of 1960, as amended by section 18 of Act 7 of 1963, sections 58 and 60 of Act 6 of 1965, section 5 of Act 18 of 1966, section 11 of Act 44 of 1974, section 14 of Act 46 of 1975 and section 17 of Act 8 of 1976.

14. Section 32 of the Service Act is hereby amended—
- (a) by the substitution for paragraph (f) of subsection (1) of the following paragraph:
- “(f) the procedure to be observed in investigating and dealing with charges of [inefficiency or] disciplinary infringement and the officers by whom the prescribed penalties may be imposed;”;
- (b) by the insertion after paragraph (1) of subsection (1) of the following paragraph:
- “(m) the composition of the committee referred to in section 10.”

Amendment of section 2 of Act 41 of 1960, as amended by section 71 of Act 6 of 1965, section 9 of Act 8 of 1968, section 11 of Act 24 of 1971, section 6 of Act 33 of 1972 and section 12 of Act 44 of 1974.

15. Section 2 of the Level Crossings Act, 1960, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The Fund shall be credited monthly with interest [at 15 the rate of three per cent per annum] on the unexpended balance of the moneys in the Fund as at the end of each month, calculated at the prevailing rate which the Administration receives on its temporary investments.”

Substitution for the word “servant” of the word “employee” in Act 35 of 1971.

16. The Railways and Harbours Pensions Act, 1971 (herein- 20 after called “the Pensions Act”), is hereby amended by the substitution for the word “servant” of the word “employee” wherever it occurs.

Amendment of section 8 of Act 35 of 1971, as amended by section 11 of Act 33 of 1972, section 33 of Act 8 of 1976 and section 17 of Act 64 of 1978.

17. Section 8 of the Pensions Act is hereby amended by the substitution, in paragraph (b) of subsection (1) of the Afrikaans 25 text, for the word “tugaanklag” of the words “dissiplinêre aanklag”.

Amendment of section 17 of Act 35 of 1971, as substituted by section 14 of Act 33 of 1972 and amended by section 15 of Act 44 of 1974, section 35 of Act 8 of 1976, section 19 of Act 64 of 1978 and section 12 of Act 80 of 1979.

18. Section 17 of the Pensions Act is hereby amended by the substitution for paragraph (a) of subsection (4) of the following 30 paragraph:

“(4) (a) Whenever membership by the New Fund is dated back, the member shall be required to pay arrear contributions to the New Fund on the following basis:

(i) For the period of continuous service prior to the first day of the April 1971 paymonth, at the rate 35 prescribed in section 8 of the Railways and Harbours Superannuation Fund Act, 1960 (Act No. 39 of 1960), according to his age at the date from which contributions are to be paid, calculated on the pensionable emoluments drawn by 40 him during the period to be covered up to the last day of the March 1971 paymonth;

(ii) for the period of continuous service from the first day of the April 1971 paymonth up to and including 30 November 1973, at the rate of four 45 per cent of the pensionable emoluments drawn by him during the period to be covered;

(iii) for the period of continuous service from 1 December 1973 up to and including 30 November 1979, at the rate of six per cent of the pensionable 50 emoluments drawn by him during the period to be covered;

(iv) for the period of continuous service from 1 December 1979, at the rate of six and three-

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quarters per cent of the pensionable emoluments drawn by him during the period to be covered;

- [(iv)] (v) in addition to the arrear contributions prescribed in subparagraphs (i), (ii), [and] (iii) and (iv), the member shall pay compound interest thereon in respect of any period up to the date or dates when the payments are actually made at the rates applicable to the antedating of pensionable service as determined in the regulations.”.

Substitution for the word “servant” of the word “employee” in Act 43 of 1974.

19. The Railways and Harbours Pensions for Non-Whites Act, 1974, is hereby amended by the substitution for the word “servant” of the word “employee” wherever it occurs.

Amendment of section 7 of Act 43 of 1974.

20. Section 7 of the Railways and Harbours Pensions for Non-Whites Act, 1974, is hereby amended by the substitution, in paragraph (b) of the Afrikaans text, for the word “tugaan-15 klag” of the words “dissiplinêre aanklag”.

Amendment of section 27 of Act 66 of 1975, as amended by section 19 of Act 67 of 1980.

21. Section 27 of the Exchequer and Audit Act, 1975, is hereby amended by the substitution, in subsection (1), for the words preceding subparagraph (a) of the following words:

“(1) Moneys appropriated out of the State Revenue Fund as loans to the Railways and Harbours Administration and which that Administration requires from time to time [for its capital programme], shall be obtained by requisition on the Treasury, and the Treasury shall determine in what instalments and on what dates the moneys so requisitioned shall be paid to that Administration and whether it shall be paid—”.

Repeal of section 2C of Act 48 of 1977, as substituted by section 24 of Act 67 of 1980.

22. Section 2C of the Railways and Harbours Finances and Accounts Act, 1977 (hereinafter called “the Finances and Accounts Act”), is hereby repealed.

Substitution of section 15 of Act 48 of 1977, as substituted by section 29 of Act 67 of 1980.

23. The following section is hereby substituted for section 15 of the Finances and Accounts Act:

“15. Moneys that the Administration requires from time to time [for its capital programme] shall be obtained as loans from the State Revenue Fund by requisition on the Treasury, and the provisions of section 27 of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), shall apply to any such loan.”.

Amendment of section 19 of Act 48 of 1977.

24. Section 19 of the Finances and Accounts Act is hereby amended by the substitution, in paragraph (a) of subsection (2), for the words “a servant” of the words “an employee”.

Amendment of section 21 of Act 48 of 1977.

25. Section 21 of the Finances and Accounts Act is hereby amended by the substitution, in subsection (3), for the words preceding subparagraph (a) of the following words:

“(3) The General Manager may from time to time issue instructions which are not inconsistent with the [regulations provided for in subsection (1)] provisions of this Act in regard to—”.

Amendment of section 24A of Act 48 of 1977, as inserted by section 19 of Act 80 of 1979.

26. Section 24A of the Finances and Accounts Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) When the Administration makes an *ex gratia* payment and the amount involved exceeds R10 000, the prior authority of Parliament shall be obtained by specifying the item in the Estimates of Expenditure and, in the event of this not being possible in practice, the payment

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shall be submitted to Parliament at the next ensuing session for validation, or the matter shall be dealt with in terms of section 7 of this Act. Where the amounts involved do not exceed R10 000 and no important principle is involved, the [Administration] General Manager may [make] 5 approve such *ex gratia* payments, in which event the matter does not require to be dealt with in terms of section 7 of this Act. The Administration shall report all [such] cases annually to the Auditor-General. The Auditor-General shall mention the total amount involved in his Report to 10 Parliament, specifying each instance where an amount of R1 000 or more is involved, as well as any instance which in his view warrants special mention."

Insertion of section 24B in Act 48 of 1977.

27. The following section is hereby inserted after section 24A of the Finances and Accounts Act: 15

"Remission or refund of revenue. 24B. Where the General Manager is satisfied, in any particular case, that special circumstances exist which warrant, wholly or in part, the remission or refunding of revenue which is recoverable or which has been recovered in respect of any of the Administration's services, he may authorize such remission or refund, provided that the amount involved does not exceed R10 000 in any one instance. In instances where the amount of R10 000 is exceeded the Minister's authority therefor should 20 be obtained. Remissions or refunds thus authorized are not regarded as being *ex gratia* and it will not be necessary for the authority of Parliament to be obtained or for the matter to be dealt with in terms of section 7: Provided that the General Manager 30 shall report annually to the Auditor-General the total amount of remissions and refunds in the instances where amounts of R5 000 or less are involved, as well as details of each instance of remission or refund where an amount exceeding 35 R5 000 is involved. The Auditor-General shall mention the total amount involved in respect of remissions and refunds in his Report to Parliament and specify each instance where an amount of R5 000 or more is involved, as well as any instance which in his 40 view warrants special mention."

Application of Act to South West Africa.

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

Short title and date of commencement.

29. This Act shall be called the Railways and Harbours Acts 45 Amendment Act, 1981, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*, except that the provisions of—

- (a) sections 2 and 3 shall be deemed to have come into operation on 1 July 1977; 50
- (b) section 18 shall be deemed to have come into operation on 1 December 1979;
- (c) sections 4 (1), 5, 7, 8, 9, 10, 11, 12 (3), 13, 14, 17 and 20 shall be deemed to have come into operation on 1 August 1980; and 55
- (d) section 12 (1) and (2) shall be deemed to have come into operation on 1 February 1981.