

No. 15, 1940.]

ACT

To amend the Railways and Harbours Service Act, 1912, the Railways and Harbours Service Act, 1925, and the Railways and Harbours Superannuation Fund Act, 1925.

(Signed by the Governor-General in Afrikaans.)
(Assented to 6th May, 1940.)

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 2 of Act 28 of 1912.

1. (1) Section *two* of the Railways and Harbours Service Act, 1912, is hereby amended by the substitution in the definition of "pensionable emoluments" of the word "amount" for the word "emoluments".

(2) The provisions of sub-section (1) shall be deemed to have come into operation upon the first day of October, 1912.

Amendment of section 41 of Act 28 of 1912.

2. Section *forty-one* of the Railways and Harbours Service Act, 1912, is hereby amended—

- (a) by the substitution in sub-section (3) for the words "or permanent ill-health or physical disability occasioned in either case without his own default" of the words "occasioned without his own default, or by reason of permanent ill-health or physical disability in respect of which a railway medical officer or such medical practitioner or board as may be prescribed, has not certified that it has been occasioned by the member's own default," and the deletion in the said sub-section of the first proviso, and of the word "further" in the second proviso; and
- (b) by the addition at the end thereof of the following sub-section:

"(5) If a member, having contributed to the Fund in respect of a period of ten years or more, is at any time compelled to retire by reason of permanent ill-health or physical disability in respect of which a railway medical officer or such medical practitioner or board as may be prescribed, certifies that it has been occasioned by the member's own default, there shall be paid to him the same amount as would have been paid to him if he had at that time retired voluntarily from the Service before superannuation; and thereafter he shall have no further claim upon the Fund or the Administration."

Amendment of section 43 of Act 28 of 1912, as amended by section 62 of Act 24 of 1925.

3. Section *forty-three* of the Railways and Harbours Service Act, 1912, is hereby amended—

- (a) by the substitution for the words "or permanent ill-health or physical disability occasioned in either case without his own default" of the words "occasioned without his own default, or by reason of permanent ill-health or physical disability in respect of which a railway medical officer or such medical practitioner or board as may be prescribed, has not certified that it has been occasioned by the member's own default," and the deletion of the first proviso and of the word "further" in the second proviso; and
- (b) by the addition at the end thereof of the following sub-section, the existing section becoming sub-section (1):

"(2) If a member is compelled, before he has contributed to the Fund in respect of a period of ten years, to retire by reason of permanent ill-health or physical disability in respect of which a railway medical officer or such medical practitioner or board as may be prescribed, certifies that it has been occasioned by the member's own default, there shall be paid to him his contributions without interest; and thereafter he shall have no further claim upon the Fund or the Administration."

- Amendment of section 1 of Act 23 of 1925. 4. (1) Section *one* of the Railways and Harbours Service Act, 1925, is hereby amended by the substitution in the definition of "pensionable emoluments" of the word "amount" for the word "emoluments".
(2) The provisions of sub-section (1) shall be deemed to have come into operation upon the first day of September, 1925: Provided that for the purposes of section *eleven* of the said Act, the said provisions shall come into operation upon the first day of June, 1940.
- Amendment of section 11 of Act 23 of 1925. 5. Section *eleven* of the Railways and Harbours Service Act, 1925, is hereby amended by the addition, at the end of item (1) of sub-paragraph (iii) of paragraph (e), of the words "except in the case of a member of the New Railways and Harbours Superannuation Fund constituted under section *three* of the Railways and Harbours Superannuation Fund Act, 1925 (Act No. 24 of 1925), in whose case that term means thirty days."
- Amendment of section 12 of Act 23 of 1925, as substituted by section 5 of Act 18 of 1938. 6. (1) Section *twelve* of the Railways and Harbours Service Act, 1925, is hereby amended by the substitution for the words "period in respect of which he shall be so entitled to payment" of the words "said maximum period of six months".
(2) The provisions of sub-section (1) shall be deemed to have come into operation upon the thirtieth day of September, 1938.
- Insertion of new section 14*bis* in Act 23 of 1925. 7. The following new section is hereby inserted in the Railways and Harbours Service Act, 1925, after section *fourteen*:
"Compensation for injury on duty. Servants employed in South-West Africa. 14*bis*. (1) If an accident to a servant arising out of and in the course of his employment under the Administration happens in the mandated territory of South-West Africa after the commencement of the Railways and Harbours (Pensions and Service) Amendment Act, 1940, and results in such servant's disablement or death—
(a) no action, whether at common law or under any statute in force in the said territory, shall lie against the Administration, at the instance of such servant or any dependant of his, for the recovery of any damages or compensation in respect of such disablement or death; and
(b) the Administration shall pay to such servant, or, if he dies, to his dependants, compensation in accordance with the Workmen's Compensation Act, 1934 (Act No. 59 of 1934), or any amendment thereof.
(2) In this section 'servant' means an officer or employee as defined in section *one*, but does not include any person employed under the provisions of sub-section (2) of section *four*, or any person who is not a workman in terms of the lastmentioned Act, or any amendment thereof."
- Validation of certain changes in conditions of employment. 8. No change in conditions of employment, referred to in sub-section (4) of section *thirty-one* of the Railways and Harbours Service Act, 1925, which was brought into operation before the commencement of this Act, shall be invalid by reason of the fact that it was brought into operation with retrospective effect, or of the fact that the Governor-General's approval thereof was not obtained within the period prescribed in the said sub-section.
- Insertion of new section 31*bis* in Act 23 of 1925. 9. The following new section is hereby inserted in the Railways and Harbours Service Act, 1925, after section *thirty-one*:
"Payment to other person of amount payable to officer or employee. 31*bis*. The provisions of section *thirty-four bis* of the Railways and Harbours Superannuation Fund Act, 1925 (Act No. 24 of 1925), shall *mutatis mutandis* apply in respect of any amount payable by the Administration to any officer or employee."
- Amendment of section 1 of Act 24 of 1925. 10. (1) Section *one* of the Railways and Harbours Superannuation Fund Act, 1925, is hereby amended by the substitution in the definition of "pensionable emoluments" of the word "amount" for the word "emoluments".
(2) The provisions of sub-section (1) shall be deemed to have come into operation upon the first day of September, 1925.
- Amendment of section 16 of Act 24 of 1925. 11. Section *sixteen* of the Railways and Harbours Superannuation Fund Act, 1925, is hereby amended—
(a) by the substitution in sub-section (3) for the words "or permanent ill-health or physical disability occasioned in either case without his own default" of the words "occasioned without his own default,

or by reason of permanent ill-health or physical disability in respect of which a railway medical officer or such medical practitioner or board as may be prescribed, has not certified that it has been occasioned by the member's own default," and the deletion in the said sub-section of the first proviso and of the word "further" in the second proviso; and

- (b) by the substitution for sub-section (4) of the following sub-section :

"(4) If a member, having contributed to the New Fund in respect of a period of ten years or more, is at any time compelled to retire by reason of permanent ill-health or physical disability in respect of which a railway medical officer or such medical practitioner or board as may be prescribed, certifies that it has been occasioned by the member's own default, there shall be paid to him the same amount as would have been paid to him if he had at that time retired voluntarily from the Service before superannuation; and thereafter he shall have no further claim upon the New Fund or the Administration."

Substitution of section 20 of Act 24 of 1925.

12. Section *twenty* of the Railways and Harbours Superannuation Fund Act, 1925, is hereby repealed and the following section substituted therefor :

"Provision in case pensioned member of New Fund is re-employed. 20. If a member of the New Fund has been granted an annuity under this Act and is thereafter re-employed in the Service in other than a casual capacity he shall, subject to the provisions of section *two* of the Railway Pensioners Act, 1936 (Act No. 27 of 1936), be entitled to contribute to the New Fund on the pensionable emoluments (including for that purpose any annuity or reduced annuity received by him from the New Fund) drawn by him during the period of his re-employment, and in the event of his retirement on the ground of superannuation or reduction in or re-organisation of staff, or of such severe bodily injury, permanent ill-health or physical disability, as is referred to in sub-section (3) of section *sixteen*, he shall be entitled to an additional annuity in respect of such period of re-employment, calculated on the basis set forth in section *eighteen* : Provided that contributions to the New Fund during such period of re-employment shall be made in accordance with the provisions of section *eight* at the rate applicable to his age at the date from which contributions become payable by him : Provided further that if the period of re-employment is less than seven years, the annuity shall be based on the average pensionable emoluments for the full period of re-employment."

Amendment of section 24 of Act 24 of 1925.

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

- (a) by the substitution in sub-section (1) for the words "or permanent ill-health or physical disability occasioned in either case without his own default" of the words "occasioned without his own default, or by reason of permanent ill-health or physical disability in respect of which a railway medical officer or such medical practitioner or board as may be prescribed, has not certified that it has been occasioned by the member's own default," and the deletion in the said sub-section of the first proviso, and of the word "further" in the second proviso; and
- (b) by the substitution for sub-section (3) of the following sub-section :

"(3) If a member is compelled before he has contributed to the New Fund in respect of a period of ten years, to retire by reason of permanent ill-health

or physical disability in respect of which a railway medical officer or such medical practitioner or board as may be prescribed, certifies that it has been occasioned by the member's own default, there shall be paid to him his contributions without interest; and thereafter he shall have no further claim upon the New Fund or the Administration."

Insertion of new section 34bis in Act 24 of 1925.

14. (1) The following new section is hereby inserted in the Railways and Harbours Superannuation Fund Act, 1925, after section *thirty-four* :

"Payment of benefits to other person than pensioner.

34bis. The General Manager may, if he is satisfied, after a report by two medical practitioners, that any person (in this section referred to as the pensioner) to whom any amount is payable under any statutory provision relating to pensions or gratuities for persons formerly employed by the Administration, is, by reason of his mental condition, unable to manage his own affairs, order—

- (a) that such amount be paid to some other person upon such conditions as the General Manager may determine as to its administration for the benefit of the pensioner; or
- (b) that a portion of such amount be so paid or be paid to the pensioner, and that the balance be paid, in the order of preference laid down in section *thirty-three*, to the persons mentioned in that section, who are dependent upon the pensioner, or to some other person upon such conditions as the General Manager may determine as to its administration, in accordance with the said order of preference, for the benefit of any such dependent person, or that the balance be partly so paid to any such dependent person and partly to such other person upon the conditions aforesaid :

Provided that no such order shall be made in respect of a pensioner for the administration of whose property a *curator* has been appointed, and that any such order shall lapse if a *curator* for the administration of the property of the pensioner concerned is appointed."

(2) The provisions of sub-section (1) shall be deemed to have come into operation upon the first day of July, 1933.

Insertion of new sections 50bis and 50ter in Act 24 of 1925.

15. The following new sections are hereby inserted in the Railways and Harbours Superannuation Fund Act, 1925, after section *fifty* :

„Benefits to certain members of the 1912 pension fund.

50bis. (1) Notwithstanding anything contained in section *one* of Act No. 7 of 1902 of Natal, any annuity provided for by section *fourteen* of Act No. 29 of 1897 of Natal shall, in the case of a servant who at the date of his retirement is a contributor to the 1912 pension fund, be computed upon the average annual pensionable emoluments of such servant for the five years immediately preceding the said date.

(2) Any person in receipt of an annuity granted under section *fourteen* of Act No. 29 of 1897 of Natal, as amended by Act No. 7 of 1902 of Natal, who was a servant at the date of his retirement, shall be entitled to receive, with effect from the commencement of the Railways and Harbours (Pensions and Service) Amendment Act, 1940, an annuity recomputed in terms of sub-section (1)."

"Benefits to dependants on death of member or annuitant of the 1912 pension fund.

50ter. (1) If a member of the 1912 pension fund or any person in receipt of an annuity payable out of that fund, dies in any circumstances in which the provisions of section *thirty-three* of the Civil Services and Pensions Funds Act, 1895 (Act No. 32 of 1895), of the Cape of Good Hope, or of section *thirteen* of Act No. 29 of 1897 of Natal, as the case may be, do not apply, there shall,

subject to the provisions of sub-section (3) and notwithstanding anything contained in section *fifty-six* or *fifty-seven* of the first-mentioned Act, or in section *nine* of the latter Act, be paid to the persons referred to in sub-section (1) of section *thirty-three* of this Act, or in the discretion of the Administration to some person on their behalf, and in accordance, *mutatis mutandis*, with the provisions of sub-sections (2) and (3) of the last mentioned section, a sum equal to twice the amount of the contributions of such member or annuitant, without interest.

(2) If the deceased member or annuitant leaves no person referred to in sub-section (1) of section *thirty-three* surviving him, payment of his own contributions only, without interest, shall be made to the person administering his estate: Provided that in the case of a member or annuitant in respect of whom the provisions of Act No. 29 of 1897 of Natal apply, payment shall be made in accordance with section *nine* of that Act.

(3) From the amounts payable under sub-section (1) or (2) there shall, in the case of a deceased annuitant, be deducted the aggregate of any amounts which he received by way of annuity."

Short title.

16. This Act shall be called the Railways and Harbours (Pensions and Service) Amendment Act, 1940.