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KANTOOR VAN DIE STAATSPRESIDENT.

STATE PRESIDENT'S OFFICE

No. 743.

15 April 1988

No. 743.

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Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg 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. 41 van 1988: Wet op Diensvoorwaardes vir die Suid-Afrikaanse Vervoerdienste, 1988.

No. 41 of 1988: South African Transport Services Conditions of Service Act, 1988.

SOUTH AFRICAN TRANSPORT SERVICES CONDITIONS OF
SERVICE ACT, 1988

Act No. 41, 1988

ACT

To provide for certain matters relating to the conditions of service of employees of the South African Transport Services; to provide for the establishment of a labour council; and to provide for related matters.

(Afrikaans text signed by the State President.)
(Assented to 31 March 1988.)

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

Definitions

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

- 5 (i) "Consolidated Service Conditions" means the Consolidated Service Conditions referred to in section 4 (1); (iii)
- (ii) "employee" means a person in the employment of the South African Transport Services in one of the capacities referred to in section 3 (1); (viii)
- 10 (iii) "General Manager" means the General Manager or Acting General Manager of the South African Transport Services; (iv)
- (iv) "Labour Council" means the Labour Council of the South African Transport Services referred to in section 8 (1); (i)
- 15 (v) "Management Agreement" means an agreement between the South African Transport Services and certain senior employees relating to conditions of service of such employees; (ii)
- (vi) "Minister" means the Minister of Transport Affairs; (v)
- (vii) "strike" means one or more of the following acts or omissions by any number of employees—
- 20 (a) the refusal or failure by them to continue to work (whether the discontinuance is complete or partial) or to resume their work or to comply with their conditions of service, or the retardation by them of the progress of work or the obstruction by them of work;
- (b) the breach or termination by them of their contracts of employment, if—
- 25 (i) that refusal, failure, retardation, obstruction, breach or termination is in pursuance of any combination, agreement or understanding between them, whether expressed or not; and
- (ii) the purpose of that refusal, failure, retardation, obstruction, breach or termination is to induce or compel the South African Transport Services or any other employer by whom persons are or have been
- 30 employed—
- (aa) to agree to or to comply with any demands or proposals concerning their conditions of service or salaries or other matters made by or on behalf of employees or any of them or by or on behalf of other persons who are or have been employed by an employer other than the South African Transport Services; or
- 35 (bb) to fail to give effect to any intention to change conditions of service or salaries or, if such change has been made, to restore the conditions of service or salaries to those which existed before the
- 40 change was made; or

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- (cc) to employ or to suspend or to terminate the employment of any person; (vi) and
- (viii) "trade union" means an organisation representative of employees, formally and explicitly recognised by the South African Transport Services as a trade union as well as an organisation which on the day prior to the operative date of this Act was officially recognised by the South African Transport Services as a trade union. (vii)

Powers of State President, Minister and General Manager and delegation of power

2. (1) (a) The power of appointing and discharging the General Manager, of determining his salary and of stipulating his conditions of service, which shall be not less favourable than those contained in the Consolidated Service Conditions, shall be vested in the State President.
- (b) The power of appointing and discharging the Deputy General Managers and Assistant General Managers, of determining their salaries and of stipulating their conditions of service, which shall not be less favourable than those contained in the Consolidated Service Conditions, shall be vested in the Minister.
- (c) Subject to the provisions of this Act and of the Consolidated Service Conditions, the power of appointing and discharging employees other than those referred to in paragraphs (a) and (b), and of stipulating their conditions of service and salaries, shall be vested in the General Manager, provided however that the General Manager, before appointing a head of department, shall consult the Minister, and provided further that the Minister may, without derogating from the power vested in the General Manager, give notice of termination of employment to an employee with whom a Management Agreement has been concluded.
- (d) The General Manager may, subject to such limitations as the Minister may impose, stipulate conditions of service and salaries, which shall be not less favourable than those contained in the Consolidated Service Conditions, to be applicable to specified employees or groups of employees.
- (2) In addition to the powers referred to in subsection (1) (c) and (d), the General Manager shall exercise whatever powers are vested in the South African Transport Services in terms of this Act or the Consolidated Service Conditions, or are necessary or desirable in order to give effect to the provisions of this Act or the Consolidated Service Conditions.
- (3) The General Manager may, subject to such limitations as he may prescribe, delegate in whole or in part the powers referred to in subsections (1) (c) and (d) and (2) or granted to him in terms of the Consolidated Service Conditions to any employee (including the incumbent from time to time of a specified post) or any other person and may grant such delegate the power to delegate further.
- (4) Delegation by the General Manager of the powers referred to in subsection (3) shall not derogate from such powers and he may amend or retract any decision taken by an employee or other person to whom he has delegated power, except where a right has been constituted as the result of such decision. This provision shall also apply *mutatis mutandis* to an employee or person to whom power has been delegated and who delegates that power further.
- (5) The General Manager or his delegate may delegate power to more than one employee or person at a time.
- (6) A delegate may delegate power delegated to him to another employee or other employees, provided that the power to do so is not limited or excluded by the delegation to him.
- (7) A delegation shall remain valid until it is withdrawn and shall not be suspended by a change in the person of the General Manager or other employee who delegated power, or the appointment of an Acting General Manager or of an employee acting in the post of the employee who delegated power or the absence or termination of the services of the General Manager, Acting General Manager or the employee who delegated power.

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(8) Should a power customarily be exercised by the incumbent of a post or should the exercise of a power reasonably relate to a particular post in terms of a description of the duties thereof compiled by the General Manager, an employee vested with delegated power to compile such description or the incumbent's supervisory officer, it shall be deemed that the General Manager has delegated such power to such incumbent.

(9) Any power exercised by an employee or other person on behalf of the South African Transport Services without such employee or person having the necessary authority to do so, may be ratified by the General Manager or by an employee vested by means of delegation with the power so exercised. The effect of such ratification shall be that the exercise of the power shall have legal effect with retrospective effect as if it had been exercised by the General Manager or the employee vested with the appropriate delegated power.

(10) No exercise of power by an employee or person acting with delegated power shall be invalid because it is not in harmony with a decision of, or policy prescribed by, the General Manager.

(11) Any delegation of power by the General Manager or any delegate prior to the operative date of this Act effected in terms of the Conditions of Employment (South African Transport Services) Act, 1983 (Act No. 16 of 1983), or the Personnel Regulations promulgated in terms thereof, shall continue to have legal force and effect until withdrawn as if such Act and Regulations were still applicable, and any reference in such delegation to the provisions of Act No. 16 of 1983 or the Personnel Regulations shall be deemed to be a reference to the equivalent provisions of this Act or the Consolidated Service Conditions, as the case may be.

25 Categories of employees

3. (1) An employee may be employed by the South African Transport Services in an intermittent casual, casual, temporary or permanent capacity or on a contract basis.

(2) A casual employee may be employed without the formalities provided for in this Act or the Consolidated Service Conditions, and normally on a short-term basis, in connection with seasonal traffic or an exceptional situation, or to replace an employee absent from duty because of leave, sickness or other reason. An applicant for employment whom it is intended to appoint to temporary employment may be employed in a casual capacity pending compliance with formalities or requirements laid down for appointment in a temporary capacity in the Consolidated Service Conditions. An intermittent casual employee may be employed at a harbour, also without such formalities, to carry out work of an intermittent nature.

(3) Employment in a temporary capacity shall be dependent upon compliance with the requirements for such appointment set out in the Consolidated Service Conditions, as applicable at the time of such appointment.

(4) An employee in temporary employment shall be appointed to permanent employment upon compliance with the requirements stipulated for such appointment in the Consolidated Service Conditions, as applicable at the time of such appointment.

(5) The conditions of service of an employee in a temporary or permanent capacity shall, subject to the provisions of section 2 (1), be regulated by the Consolidated Service Conditions, as amended from time to time in terms of this Act.

(6) The conditions of service of an employee appointed on a contract basis shall be stipulated in the contract of employment entered into with him; and such conditions of service may differ in whole or in part from the Consolidated Service Conditions.

(7) There shall be no discrimination on the ground of colour, race or sex in effecting an appointment in terms of subsections (2) to (6).

(8) A casual or an intermittent casual employee in the employment of the South African Transport Services on the operative date of this Act shall continue in employment in such capacity until his contract is terminated or until he is appointed to temporary employment in terms of the Consolidated Service Conditions.

(9) An employee in the employment of the South African Transport Services in a temporary or permanent capacity on the operative date of this Act, shall continue to be employed in such capacity, but the conditions of service of such employee shall,

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notwithstanding anything to the contrary contained in his contract of service, be as set out in the Consolidated Service Conditions, as amended from time to time in terms of this Act.

(10) The service conditions of an employee of the South African Transport Services in temporary or permanent employment on the operative date of this Act set out in the Consolidated Service Conditions shall not be less favourable than those that were applicable to him on the date prior to such operative date.

(11) An employee in the employment of the South African Transport Services on a contract basis, other than a casual or an intermittent casual employee, on the operative date of this Act shall continue in such employment and his conditions of service shall continue to be governed by the terms of the contract of service entered into with him prior to such operative date, provided however that in so far as the Instructions in connection with the Service Conditions of Coloured, Indian and Black Employees, the Conditions of Employment (South African Transport Services) Act, 1983 (Act No. 16 of 1983), and the Personnel Regulations promulgated in terms thereof are applicable, in terms of such contract of service, to him, the equivalent provisions of this Act and the Consolidated Service Conditions shall be substituted therefor.

Consolidated Service Conditions

4. (1) The South African Transport Services shall, regard being had to section 3 (10), publish in a Special Notice the Consolidated Service Conditions applicable to employees in temporary or permanent employment.

(2) The provisions of the Consolidated Service Conditions shall, subject to the provisions of section 2 (1), be binding upon the South African Transport Services and its employees in temporary or permanent employment.

(3) The Consolidated Service Conditions may be amended by the Labour Council. Should the Labour Council fail to agree, on the basis of the two-thirds majority referred to in section 14 (3), on any matter relating to such amendment, the provisions of section 8 (3) relating to the settlement of disputes shall be applicable.

(4) Amendments by the Labour Council to the Consolidated Service Conditions shall be effected in an agreement as provided for in section 15 or by a decision which, in terms of this Act, is regarded as the equivalent of such an agreement.

Payment of money due to employee to person other than employee

5. The South African Transport Services may, on the basis of a report issued by two medical practitioners that an employee to whom any payment is due in terms of this Act or the Consolidated Service Conditions is, by reason of his mental or physical condition, unable to manage his own affairs, order that such payment be made, in whole or in part, to some other person for the benefit of the employee or his dependants, under such conditions as the South African Transport Services may prescribe. Such payment shall be deemed to constitute payment to the employee. The provisions of this section shall not apply in a case in which a *curator bonis* has been appointed and, in the event of the appointment of a *curator bonis* after an order has been issued in terms of this section, such order shall lapse except in respect of any payment already made in terms thereof.

Salary adjustment basis

6. Salary adjustments for employees of the South African Transport Services (including an adjustment effected after reference of a dispute to mediation, arbitration or other dispute conciliation or settlement procedure in terms of section 8 or after reference of a dispute to arbitration in terms of section 20) shall be based on labour market considerations, provided that—

- (a) salaries payable to members of the Public Service referred to in section 7 of the Public Service Act, 1984 (Act No. 111 of 1984); and
- (b) productivity,

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shall be among the factors taken into consideration, and provided further that the reference to these two factors shall not be interpreted so as to exclude proper consideration of other relevant factors.

Certain employees deemed to be workmen. Compensation for injury on duty in case of employee employed outside the Republic

7. (1) An employee whose earnings, calculated in the manner set forth in section 41 of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), exceed the sum provided for in section 3 (2) (b) of that Act shall, notwithstanding the provisions of the latter section, be deemed to be a workman within the meaning of that Act, provided that, notwithstanding the provisions of section 7 of that Act or of any other law, where an accident in respect of which compensation is payable is due to negligence of a fellow employee acting in the course of his employment, the employee or, if he is deceased, his dependants shall be entitled to an award equivalent to the pecuniary loss caused by the accident, less the compensation payable in terms of that Act and any other benefit (other than the insurance money, pension or benefit referred to in section 1 (1) of the Assessment of Damages Act, 1969 (Act No. 9 of 1969), in the case of a dependant's claim) that may accrue as a result of the accident.

(2) When the South African Transport Services has paid compensation to an employee or any dependant of a deceased employee under the provisions of Act No. 30 of 1941, in respect of an accident which was caused under the circumstances referred to in section 8 (1) thereof, it shall be entitled to accept from such employee or dependant a cession of any right of action which such employee or dependant may have to recover damages from any third party within the meaning of that subsection, and to sue on such cession, and such employee or dependant shall have the right to cede such right of action to the South African Transport Services.

(3) If an accident to an employee arising out of and in the course of his employment, happens outside the Republic of South Africa and results in such employee's disablement or death—

(a) no action, whether at common law or under any statute in force in the territory where the accident happened, shall be brought against the South African Transport Services by such employee or any dependant of his, for the recovery of damages or compensation in respect of such disablement or death; and

(b) there shall be paid to such employee or, if he dies, to his dependants, compensation in accordance with Act No. 30 of 1941 and an award in terms of subsection (1), if applicable.

(4) In subsection (3) "employee" does not include any person employed in a casual capacity or on a contract basis as referred to in section 3 (1) or any person who is not a workman within the meaning of Act No. 30 of 1941, construed in accordance with subsection (1).

Establishment, objectives and functions of Labour Council

8. (1) A Labour Council of the South African Transport Services is hereby constituted.

(2) The objectives of the Labour Council shall be—

- (a) the maintenance and promotion of labour peace; and
- (b) the prevention of labour disputes.

(3) The functions of the Labour Council in pursuance of its objectives shall be—

(a) collective bargaining and the conclusion of agreements as referred to in section 15 in connection with conditions of service and salaries of employees occupying grades represented by trade unions, as well as matters related thereto;

(b) the referral, subject to the provisions of subsection (5), to mediation, arbitration or other dispute conciliation or settlement procedure which it may deem appropriate, of any matter which was the subject of collective bargaining in terms of paragraph (a) and in respect of which it was unable to conclude an agreement as referred to in section 15; and

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- (c) the investigation of, and submission of recommendations in connection with, matters referred to in paragraph (a), including, notwithstanding the contents of subsection (4) (b), the representation of employees by particular trade unions, upon receipt of a written request from a trade union, the Minister or the South African Transport Services to do so.
- 5 (4) The expression "matters related thereto" used in subsection (3) (a) shall not include—
- (a) the formal and explicit recognition of an unrecognised trade union or the formal and explicit withdrawal of recognition of a recognised trade union
10 by the South African Transport Services;
- (b) the representation of employees by particular trade unions; or
- (c) a disciplinary decision or disciplinary action in any individual case.
- (5) Should the Labour Council in the exercise of the function referred to in subsection (3) (b) be unable to agree whether mediation, arbitration or other dispute
15 conciliation or settlement procedure should be resorted to or as to what person, persons or body should conduct the mediation, arbitration or other dispute conciliation or settlement procedure, the Chairman shall decide on its behalf.
- (6) Any decision arrived at as the result of referral of a matter to mediation, arbitration or other dispute conciliation or settlement procedure shall be regarded as
20 the equivalent of an agreement of the Labour Council.
- (7) The Labour Council shall be responsible to the Minister for the achievement of its objectives and the exercise of its functions. The Chairman of the Labour Council shall frame annually and submit to the Minister a report on the Labour Council's activities during the previous 12 months. Every such annual report shall
25 be laid upon the Table in Parliament by the Minister within 21 days after it has been received by the Minister, if Parliament is then in session or, if Parliament is not then in session, within 21 days after the commencement of its next ensuing session.
- (8) The Labour Council shall, due regard being had to the desirability of uniformity of policy in the South African Transport Services, follow a flexible course
30 in exercising its functions and may adapt its procedures to the level appropriate to each matter that engages its attention so that—
- (a) the parties and the level of bargaining may differ from case to case;
- (b) matters of a regional nature may be dealt with on a regional basis;
- (c) matters in which a limited number of parties are involved may be dealt with
35 on the limited basis involved; and
- (d) matters peculiar to a particular section of the South African Transport Services, such as railways, harbours, pipelines, road transport or airways, may be dealt with by a chamber of the Labour Council designated for the purpose of dealing with such section generally or with a specified matter
40 relating to such section.
- (9) When a matter is dealt with in terms of subsection (8) (b), the trade union that represents the employees concerned shall be entitled to have a representative from the headquarters of such trade union present when the matter is discussed.

Legal nature of Labour Council

- 45 9. The Labour Council shall not be a separate legal person, but it shall function autonomously, subject to the provisions of this Act, provided that, notwithstanding anything to the contrary in the State Liability Act, 1957 (Act No. 20 of 1957), all legal proceedings to which the Labour Council is a party, shall be brought by or against the Labour Council in the name of "the Labour Council of the South African
50 Transport Services" and the necessary service of process therein shall be effected on the Chairman of the Labour Council.

Composition of Labour Council and participating parties

10. (1) The Chairman of the Labour Council shall, subject to the provisions of subsections (2) and (5), be appointed and dismissed by the Minister, provided that

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the Minister when appointing a Chairman shall act in accordance with a recommendation of the Labour Council; and before dismissing a Chairman shall consult the Labour Council, and provided further that if a Chairman is unable, for any reason, to carry out his duties the Minister may appoint an Acting Chairman for the period of such inability and that the Acting Chairman shall be vested, during such period, with all the powers with which the Chairman is vested in terms of this Act.

(2) The Chairman shall be a person with knowledge and expertise in labour relations and shall possess the experience and qualities necessary for the proper fulfilment of his duties. He shall not be directly connected with the South African Transport Services.

(3) The term of appointment of the Chairman shall not exceed three years, provided that a Chairman may be appointed for a subsequent term or terms of office.

(4) The Chairman shall decide, subject to the provisions of this Act and after consultation with the Labour Council, what matters fall within the jurisdiction of the Labour Council.

(5) The first Chairman shall be appointed by the Minister on the recommendation of a meeting between, on the one hand, the General Manager and such Deputy or Assistant General Managers as may be nominated by the General Manager and, on the other hand, one representative of each trade union. The General Manager shall be the chairman at such meeting and the parties shall have the same voting rights as are provided for the Labour Council in section 14. The recommendation of the meeting shall, subject to the provisions of subsection (3), include a recommendation as to the term of office of the first Chairman.

(6) The first Chairman shall upon appointment forthwith proceed with the necessary preparatory work for the proper functioning of the Labour Council.

(7) Provision may be made in the constitution of the Labour Council for any other stipulations relating to the Chairman as may be considered necessary.

(8) The members of the Labour Council shall consist of the South African Transport Services and the trade unions that were officially recognised by the South African Transport Services on the day before the operative date of this Act.

(9) The representatives of the South African Transport Services on the Labour Council shall be appointed by the South African Transport Services.

(10) The representatives of the trade unions on the Labour Council shall be appointed by the trade unions.

(11) A trade union which is formally and explicitly recognised by the South African Transport Services on or after the operative date of this Act may apply to the Labour Council to become a member thereof and, if such application is granted by the Labour Council by a three-quarters majority vote, shall become a member and shall be entitled to nominate representatives thereto. The decision of the Labour Council shall be final, provided that, if a trade union's application is not accepted, it may again apply after a period of twelve months has elapsed.

(12) The membership of a trade union on the Labour Council shall be terminated by—

- (a) written resignation by the trade union;
- (b) formal and explicit withdrawal of recognition of the trade union by the South African Transport Services; or
- (c) any other ground prescribed in the constitution of the Labour Council.

(13) Provision may be made in the constitution of the Labour Council for any other stipulations in connection with representation and such related matters as may be considered necessary.

Constitution

11. (1) The Labour Council shall draw up a constitution and may amend such constitution from time to time.

(2) The constitution shall regulate those matters which in terms of this Act may or are required to be regulated by the constitution as well as those matters which, although not expressly referred to in this Act, are necessary for the exercise of the Labour Council's functions and powers and in pursuance of its objectives.

(3) The acceptance of the constitution or an amendment of its provisions shall be subject to a two-thirds majority of all voting members of the Labour Council.

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(4) Should the Labour Council be unable to agree on the original constitution, the first Chairman of the Labour Council shall draw up the constitution, and such constitution shall be deemed to have been drawn up in terms of subsection (1).

Advisory function

5 12. The Labour Council, may, on its own initiative or at the request of the Minister, undertake an advisory function in regard to any matter that falls within its objectives, functions or powers.

Powers of Labour Council

10 13. The Labour Council shall, in pursuance of its objectives and the exercise of its functions, be vested with power, in its own name, to—

- (1) conclude binding contracts, in addition to those referred to in section 15, with other parties;
- (2) acquire, alienate, encumber and lease movable and immovable property;
- 15 (3) institute investigations on its own initiative and on request and to gather evidence and information for that purpose;
- (4) appoint and dismiss its own personnel and determine their conditions of service and salaries;
- (5) obtain funds, dispose thereof, deal therewith, keep records thereof and arrange for the audit thereof;
- 20 (6) arrange meetings in accordance with its constitution, keep minutes and make and execute decisions;
- (7) regulate, subject to the provisions of this Act, its own membership;
- (8) appoint a management committee, an executive committee and subcommittees;
- 25 (9) appoint specialist committees on a basis of equal representation, provided that such specialist committees may co-opt experts in an advisory capacity who have no connection with the South African Transport Services or the trade unions, without such experts having votes on the committee; and
- 30 (10) perform all other actions which are reasonably required in pursuance of its objectives or in the exercise of its functions.

Voting and manner of arriving at decisions

14. (1) Voting rights on the Labour Council, as between the representatives of the South African Transport Services and the representatives of the trade union or the trade unions, as the case may be, shall be on an equal basis. Each trade union
35 participating in negotiating and decision-making on the Labour Council shall have only one vote.

(2) The principle of parity of votes shall be maintained throughout and the division of votes in cases of unequal representation and absence of representatives from meetings shall be governed, subject to this principle, by the constitution of the
40 Labour Council.

(3) Subject to the provisions of sections 10 (11) and 15 (7), a decision of the Labour Council made with a two-thirds majority shall be a binding decision of the Labour Council.

(4) The Chairman of the Labour Council shall have no vote.

45 Agreements

15. (1) A decision of the Labour Council in connection with a matter referred to in section 8 (3) (a) shall constitute an agreement of the Labour Council.

(2) Such agreement shall be reduced to writing.

(3) Notwithstanding anything to the contrary contained in any other law currently
50 in force or subsequently promulgated, or in any contract, such agreement shall, subject to the provisions of subsection (7), be binding on the South African Transport Services, the trade unions concerned and all employees to whom it is declared to be applicable.

(4) In the case of non-acceptance on the part of a minority of members of the
55 Labour Council of an agreement of the Labour Council, the agreement shall

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nevertheless be binding on all members and all employees to whom it is declared to be applicable, provided that such minority party shall be entitled to make representations within a specified number of days to a committee of the Labour Council, under the chairmanship of the Chairman of the Labour Council, which shall consider the dispute and make recommendations thereon. The constitution of the Labour Council shall regulate this aspect in greater detail.

(5) The current salaries of employees occupying grades which are represented by the trade unions, as well as the Consolidated Service Conditions, shall be deemed to constitute the contents of the first agreement of the Labour Council and the starting point for negotiations between the parties.

(6) Agreements concluded by the Labour Council shall be made available to each member of the Labour Council, and the South African Transport Services shall publish in a Special Notice each agreement affecting the Consolidated Service Conditions.

15 (7) (a) An agreement of the Labour Council on salaries shall be submitted to the Minister by the Labour Council. Such agreement shall have no legal force and effect until thirty days have elapsed after the date of receipt by the Minister of Transport Affairs of such agreement, provided that the Minister may within such period of thirty days request the Labour Council to
20 reconsider its decision and, should he do so, shall provide reasons for his request, and provided further that the effect of such request shall be that the agreement shall have no legal effect whatsoever. The Labour Council shall, upon receipt of such request, reconsider the matter and if it arrives at a decision after such reconsideration based on the required two-thirds
25 majority, such decision shall constitute the agreement of the Labour Council. If it does not arrive at such a decision, mediation, arbitration or other dispute conciliation or settlement procedure shall be resorted to in terms of section 8 (3) (b).

30 (b) Paragraph (a) shall apply, in addition to salaries, to other service conditions and related matters in respect of which the Minister gives the Labour Council notice that it shall apply, provided that such notice shall not affect any agreement of the Labour Council arrived at less than thirty days after such notice is received by the Labour Council.

35 (c) Paragraphs (a) and (b) shall not apply to an agreement of the Labour Council concluded after reconsideration of a matter at the Minister's request in terms of paragraph (a) nor to a decision that is regarded in terms of this Act as the equivalent of an agreement of the Labour Council after reference of a matter by the Labour Council to mediation, arbitration or other dispute conciliation or settlement procedure in terms of section 8 (3)
40 (b).

(d) Paragraphs (a), (b) and (c) shall be applicable *mutatis mutandis* to a decision of a conciliation board referred to in section 19 (3) and (4).

Authority of representatives

16. When the Labour Council has concluded an agreement in terms of section 15,
45 the representatives of the South African Transport Services on the Labour Council who reached such agreement shall be deemed to have been vested with the authority necessary to render such agreement binding on the South African Transport Services. This provision shall also apply *mutatis mutandis* to the representatives of the trade union or unions involved.

50 Management and administration

17. (1) The Labour Council shall be accommodated if possible and as soon as practicable in a building that shall constitute, from the point of view of the South African Transport Services and the trade unions, neutral ground.

(2) The Labour Council shall strive, in pursuance of its objectives and the exercise
55 of its functions, to be neutral both in fact and in appearance.

(3) The salaries and the service conditions of the Chairman and members of the secretariat of the Labour Council shall be of such a nature that competent persons are recruited and retained.

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Finance

18. (1) The Labour Council shall control its own finances, and the funds of the Labour Council shall be raised by means of contributions by every employee (excluding intermittent casual and casual employees) of the South African Transport Services on an equal basis to be collected annually during April. The South African Transport Services shall contribute an amount equal to the amount thus collected and pay the total amount to the Labour Council at the end of May every year.

(2) The amount to be deducted from employees' salaries shall be determined from year to year according to the needs of the Labour Council as determined by the Labour Council and communicated to the South African Transport Services.

(3) The finances of the Labour Council shall be managed, controlled and administered in accordance with accepted business and accounting principles, a bank account shall be opened, financial statements shall be kept and financial and audit reports shall be submitted to the members and the Minister.

15 (4) The South African Transport Services shall make an initial non-refundable amount available to the Labour Council sufficient to enable it to commence its activities.

Appointment of conciliation board

19. (1) Whenever representations are made to the South African Transport Services by a trade union in connection with conditions of service or salaries of employees who are represented by such union, or related matters, and it is not found possible to reach agreement, the South African Transport Services shall, notwithstanding the provisions of sections 8 to 18, should the trade union concerned so request, as soon as reasonably possible, appoint a conciliation board. Such board, which shall consist of not more than three representatives nominated by the trade union and an equal number nominated by the South African Transport Services, which shall include a chairman, shall investigate the matter and decide thereon. The expression "related matters" used in this subsection shall be subject to the limitations referred to in section 8 (4). This subsection shall furthermore not be applicable to representations in conflict with an agreement of the Labour Council or a decision, regarded in terms of this Act as being equivalent to such an agreement, unless a period of twelve months has expired since such agreement or decision was arrived at.

(2) A conciliation board shall make its report to the General Manager. The General Manager may, within thirty days of the receipt of the report, request the conciliation board to reconsider its decision, and in that event the conciliation board shall, after such reconsideration, submit a further report.

(3) A decision of a conciliation board subscribed to by a two-thirds majority of the members shall, subject to subsection (2) and section 15 (7) (d), be regarded as the equivalent of an agreement of the Labour Council.

(4) Whenever representations are made to the South African Transport Services by a group of employees who do not constitute a trade union, in connection with their conditions of service or salaries and it is not found possible to reach agreement, the South African Transport Services may, after having compiled appropriate terms of reference, appoint a conciliation board. The provisions of subsection (1) as to the membership and chairman of the conciliation board referred to therein shall *mutatis mutandis* apply. The board shall investigate the matter and decide thereon. Such decision, if subscribed to by a two-thirds majority of the members of the board, shall, subject to the provisions of section 15 (7) (d), be regarded as the equivalent of an agreement of the Labour Council. This subsection shall however not be applicable to representations in conflict with an agreement of the Labour Council or a decision regarded in terms of this Act as being equivalent to such an agreement, unless a period of twelve months has expired since such agreement or decision was arrived at.

55 Referral to arbitration of matters not disposed of by conciliation board

20. (1) Whenever it has not proved possible to reach agreement by means of a conciliation board in terms of section 19 on any matter, the matter shall be referred

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by the conciliation board to arbitration. The arbitrator, arbitrators or arbitrating body shall be selected by the conciliation board on the basis of a two-thirds majority. Should the board be unable to decide whether an arbitrator, arbitrators or arbitration body should be used or, if it decides on an arbitrator, arbitrators or arbitration body, who the arbitrator, arbitrators or arbitration body should be, the Chairman of the Labour Council shall make the decision on behalf of the board.

(2) The decision of the arbitrator, arbitrators or the arbitrating body shall be regarded as equivalent to an agreement of the Labour Council.

Prohibition of strikes

10 21. (1) No employee or other person shall instigate a strike, or incite any employee to take part in or to continue a strike, and no employee shall take part in a strike or in the continuation of a strike.

(2) An employee or other person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one 15 thousand rand or to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

(3) (a) Whenever in any criminal proceedings against an employee employed in a particular department, branch or section of the South African Transport Services for having taken part, in contravention of subsection (1), in a 20 strike or in the continuation of a strike, it is proved that such concerted action as is described in paragraph (b) took place in that department, branch or division during the period covered by the charge, and that at any time during that period the accused was engaged upon work or a type of 25 work with respect to the performance of which such a departure from standards, methods, procedures or practices as is referred to in paragraph (b) (i) had occurred, such concerted action shall be deemed to constitute a retardation of the progress of work or an obstruction of work within the meaning of the definition of "strike" contained in section 1.

30 (b) The concerted action referred to in paragraph (a) is any concerted action on the part of any number of employees which—

(i) involves a departure from standards, methods, procedures or practices which were previously observed, maintained or adopted by those 35 employees as their normal and regular routine in or in connection with the performance of their work;

(ii) has resulted in a diminution in the output or a reduction in the tempo of work or a prolongation of the time normally taken to perform particular tasks in the department, branch or section concerned; and

40 (iii) by reason of any circumstances referred to in subparagraph (ii) has had, or was likely to have if continued, a detrimental effect upon the punctuality, regularity or frequency of any of the South African Transport Services' transport services or upon the efficiency of the South African Transport Services in general.

(4) Whenever an employee or other person is charged under this section with 45 having instigated a strike, or with having incited an employee to take part in or to continue a strike, or with having taken part in a strike or in the continuation of a strike, and refusal, failure, retardation, obstruction, breach or termination such as is referred to in the definition of "strike" contained in section 1 (as amplified by subsection (3) of this section) and stated in the charge, is proved, it shall be 50 presumed, until the contrary is proved, that the refusal, failure, retardation, obstruction, breach or termination was in pursuance of a combination, agreement or understanding and for a purpose such as is referred to in the said definition and stated in the charge.

(5) Should the South African Transport Services in the event of a strike decide that 55 an employee or a group of employees is participating or has participated in such strike, it shall, by means of a notice, in substitution for normal disciplinary procedure or action, extend to the employee or group of employees concerned an opportunity

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of providing, within three days, a written explanation for not complying with his or their normal duties. Such notice may be made by means of verbal communication, letter, publication or the affixing of notices at his or their fixed place of work or, if he does or they do not have a fixed place of work, at the place where he or they sign on or report for duty. The affixing of notices at the fixed place of work, if applicable, shall be deemed to be due notice. Upon the expiry of such period, the South African Transport Services shall take into account any representations so made, and shall thereafter have the right to terminate the services of such employee or employees.

How disciplinary infringement may be dealt with

- 10 22. (1) One of the following punishments (of which those mentioned in paragraph (a) shall not be recorded and those mentioned in paragraph (b) shall be recorded) may be imposed for a disciplinary infringement upon the application of the disciplinary provisions of the Consolidated Service Conditions—
- 15 (a) (i) a caution or a reprimand; or
(ii) a fine of less than ten rand, recoverable by deduction from salary; or
- (b) (i) a fine of not less than ten rand, recoverable in instalments or otherwise, by deduction from salary; or
(ii) stoppage of increments in salary for a specified period; or
(iii) reduction of salary for a specified period; or
20 (iv) reduction in rank, grade or class, with or without reduction of salary, for a specified period; or
(v) reduction in rank, grade or class, with or without reduction of salary, for an unspecified period; or
(vi) enforced resignation, which shall mean the automatic termination of
25 service from the date stated in the order to resign; or
(vii) dismissal from the date of suspension or, if the employee is not under suspension on the date on which he is found guilty of the disciplinary infringement, then as from the date on which the notification of punishment is handed to him.
- 30 (2) Provision may be made in the Consolidated Service Conditions for the expunging, subject to such conditions as may be stipulated, of recorded punishments specified therein.

Appropriation of fines and unclaimed salary to certain funds

23. Any fines received by the South African Transport Services under this Act or 35 the Consolidated Service Conditions or any unclaimed salary or allowances of whatever kind due to employees shall be paid to the Benevolent Fund and the South African Transport Services Institutes Fund in equal proportions and may be used for the purpose of those funds as determined from time to time by the Minister, provided that such payment shall not prevent an employee from recovering such 40 unclaimed salary or allowances according to law and, if his claim is established, the amount due may be paid to him.

Continuation of Sick Fund, establishment and management of dispensaries, and cession of right by a supplier of a service

24. (1) The South African Railways and Harbours Sick Fund constituted in terms 45 of regulations framed under section 32 (1) (g) of the Railways and Harbours Service Act, 1960 (Act No. 22 of 1960), shall continue in existence under the name of the "South African Transport Services Medical Scheme".

(2) The South African Transport Services is hereby empowered to establish and manage dispensaries for the purposes of the South African Transport Services 50 Medical Scheme, and existing dispensaries established for the purpose of the Sick Fund referred to in subsection (1) shall continue in existence as dispensaries of such Medical Scheme.

(3) The Minister of National Health and Population Development shall be consulted before any new dispensary is established in terms of subsection (2).

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(4) No cession by a supplier of a service of any right to payment, in respect of a service which has been or may be supplied by him to a member or beneficiary of the South African Transport Services Medical Scheme, to another party shall be binding on the member or beneficiary concerned or such Medical Scheme. A service shall mean, for the purpose of this subsection, any benefit for which provision is made in the regulations referred to in section 25.

Regulations for the establishment and management of a medical scheme

25. (1) The Minister may make regulations not inconsistent with this Act with respect to the establishment of a medical scheme and the management thereof.
- 10 (2) Any regulation made in terms of this section and any amendment thereof may be made with retrospective effect from a date not earlier than 1 April 1960 and may make provision for the exercise of a discretion by the General Manager or an employee, or any board appointed in terms of the regulations.
- (3) Any regulation promulgated in respect of the establishment of a medical 15 scheme and the management thereof in terms of a law repealed by this Act, shall be deemed to have been promulgated in terms of subsection (1).

Disciplinary charges and disciplinary and other appeals

26. (1) A disciplinary charge served upon an employee prior to the operative date of this Act in terms of the Conditions of Employment (South African Transport 20 Services) Act, 1983 (Act No. 16 of 1983), and the Personnel Regulations promulgated in terms thereof, shall, subject to the provisions of subsections (2) and (3), be dealt with in terms of such Act and Regulations as if this Act had not been promulgated.
- (2) An appeal resulting from a disciplinary charge referred to in subsection (1) 25 lodged before, but not disposed of before, the operative date of this Act shall be dealt with as if this Act had not been promulgated.
- (3) An appeal resulting from a disciplinary charge referred to in subsection (1) lodged on or after the operative date of this Act shall be dealt with in terms of section 22 and the Consolidated Conditions of Service.
- 30 (4) An appeal lodged in terms of Personnel Regulation 27 by an employee before, but not disposed of before, the operative date of this Act shall be dealt with as if this Act had not been promulgated. Should such appeal fail, the employee's further rights of appeal shall be governed by the provisions of the Consolidated Conditions of Service.

35 Repeal of laws

27. The laws specified in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

Short title and commencement

28. This Act shall be called the South African Transport Services Conditions of 40 Service Act, 1988, and shall come into operation on a date to be stipulated by the State President by proclamation in the *Gazette*.

Schedule
LAWS REPEALED

No. and year of law	Short title	Extent of repeal
Act No. 65 of 1981	South African Transport Services Act, 1981	Section 5 (1) (g)
Act No. 16 of 1983	Conditions of Employment (South African Transport Services) Act, 1983	The whole
Act No. 5 of 1984	South African Transport Services Amendment Act, 1984	Sections 11 and 12
Act No. 44 of 1985	South African Transport Services Amendment Act, 1985	Sections 22 to 29 inclusive
Act No. 91 of 1987	South African Transport Services Amendment Act, 1987	Sections 5 and 6