

No. 7, 1963.]

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

ACT

To amend the Railways and Harbours Service Act, 1912; the Second Railway Construction Act, 1955; the Railways and Harbours Control and Management (Consolidation) Act, 1957; the Railways and Harbours Service Act, 1960; and the Railways and Harbours Superannuation Fund Act, 1960; and to provide for certain incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 22nd February, 1963.)

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

Amendment of section 50 of Act 28 of 1912, as amended by section 67 of Act 24 of 1925, section 11 of Act 27 of 1930 and section 3 of Act 19 of 1931.

1. Section *fifty* of the Railways and Harbours Service Act, 1912, is hereby amended—

- (a) by the insertion, after the words “the deceased member” where they occur for the first time, of the words “or annuitant”;
- (b) by the substitution for the words “For the purposes of this section the mother of an illegitimate child of the deceased member or annuitant or a dependent illegitimate or adopted child, whether or not such adopted child was adopted under the provisions of the Adoption of Children Act, 1923, shall, where there is no widow or legitimate child, have respectively the same rights as a widow and a legitimate child” of the following words:

“A member or annuitant may by written notice in his lifetime to the Administration in manner prescribed, direct that a child whom he has legally adopted under the provisions of any Act relating to the adoption of children shall, for the purpose of this section, be treated as a legitimate child of the member or annuitant, and in that event such child shall, upon the death of the member or annuitant, be deemed to be a legitimate child.

For the purposes of this section the mother of an illegitimate child of the deceased member or annuitant, or a dependent illegitimate child, or a dependent adopted child who has not been legally adopted as aforesaid or who has been legally adopted as aforesaid but is not deemed to be a legitimate child in terms of the immediately preceding paragraph shall, where there is no widow or legitimate child, have respectively the same rights as a widow and a legitimate child.”.

Amendment of First Schedule to Act 47 of 1955 as amended by Act 33 of 1958.

2. (1) The First Schedule to the Second Railway Construction Act, 1955, is hereby amended by the substitution of the following for the description, approximate length and estimated cost of the third line of railway mentioned in that Schedule:

<i>“Description of line.</i>	<i>Approximate length</i>	<i>Estimated cost.</i>
	<i>Miles</i>	<i>R</i>
From a junction with the existing line between Germiston and Elsburg at approximately mileage 703 miles 31 chains in a southerly direction to a terminus at Kwesine.. .. .	11.44	6,834,000.”.

(2) Any expenditure incurred in connection with the construction and equipment of the said line of railway, as re-defined by sub-section (1) shall, together with any expenditure incurred in connection with the construction and equipment of any portion thereof prior to the commencement of this Act, not exceed in the aggregate the amount shown in the third column of the said First Schedule opposite the description of the said line.

Amendment of section 2 of Act 70 of 1957, as amended by section 1 of Act 4 of 1958.

Amendment of section 3 of Act 70 of 1957, as amended by section 43 of Act 30 of 1959, section 37 of Act 44 of 1959, section 2 of Act 2 of 1960, section 7 of Act 62 of 1961 and section 6 of Act 62 of 1962.

Amendment of section 58 of Act 70 of 1957.

3. Section *two* of the Railways and Harbours Control and Management (Consolidation) Act, 1957, is hereby amended by the deletion in paragraph (22), of the words "but not exceeding the average rate of interest payable by the Administration to the Minister of Finance during the financial year of the Administration in which the loan is granted to the servant."

4. Section *three* of the Railways and Harbours Control and Management (Consolidation) Act, 1957, is hereby amended by the substitution, for paragraph (*jj*) of sub-section (1), of the following paragraph:

"(*jj*) the sale of intoxicating liquor and other articles in any refreshment room or bar, or on any train, or from any stall, barrow or receptacle, subject to the provisions of this Act;"

5. (1) Section *fifty-eight* of the Railways and Harbours Control and Management (Consolidation) Act, 1957, is hereby amended—

(a) by the substitution, for sub-section (1), of the following sub-section:

"(1) (*a*) The Administration may, notwithstanding anything in any other law contained, but subject to those provisions of the Liquor Act, 1928 (Act No. 30 of 1928), which specifically apply to the Administration, undertake the sale of—

- (i) intoxicating liquor, with or without other refreshments, smokers' requisites and any other articles which the Administration deems desirable, in any refreshment room or bar at any place under the control of the Administration approved by the Minister, or at any airport approved by the Minister, who shall, before granting his approval, consult the magistrate of the district in which such place or such airport is situate;
- (ii) refreshments (excluding intoxicating liquor), smokers' requisites and any other articles which the Administration deems desirable, in any refreshment room or from any stall, barrow or receptacle at any place under the control of the Administration;
- (iii) refreshments (including intoxicating liquor), smokers' requisites and any other articles which the Administration deems desirable, on any train.

For the purpose of this Chapter, the expression 'train' shall be deemed to include an aircraft used by the Administration in connection with its air services.

(b) In the exercise of its powers under sub-paragraph (iii) of paragraph (*a*) the Administration may on any train sell intoxicating liquor also to any Bantu (as defined in sub-section (7) of section *sixty bis*) of the age of eighteen years or more, and any such Bantu may purchase intoxicating liquor from the Administration on any train and may possess any liquor so purchased by him.

(c) The sale by the Administration of intoxicating liquor and other articles in terms of paragraphs (*a*) and (*b*) of this sub-section shall be subject to the provisions of this Chapter and of any applicable regulation.

(d) The Administration may, upon such conditions as it may think fit, grant to any person a concession to carry on, at any place under the Administration's control, any trading activity in which the Administration may itself engage in terms of paragraph (*a*) of this sub-section, and may let to such person any land or premises required for that purpose: Provided that nothing in this paragraph contained shall be deemed to relieve such person of the obligation to obtain any licence or other authority which he would by law be required to obtain for the conduct of his business if such business were carried on on private premises;"

(b) by the substitution, in that part of sub-section (2) which precedes paragraph (*a*), for the words "such

refreshment room” of the words “refreshment room or bar referred to in sub-paragraph (i) of paragraph (a) of sub-section (1)”, and by the insertion in paragraph (c) of that sub-section after the word “room” wherever it occurs, of the words “or bar”.

(2) Any approval given, concession granted or other action lawfully taken prior to the commencement of this Act under sub-section (1) of section *fifty-eight* of the Railways and Harbours Control and Management (Consolidation) Act, 1957, shall be deemed to have been given, granted or taken under that sub-section as substituted by sub-section (1) of this section.

Substitution of new section for section 59 of Act 70 of 1957.

6. The following section is hereby substituted for section *fifty-nine* of the Railways and Harbours Control and Management (Consolidation) Act, 1957:

“Payments to be made to Treasury. 59. There shall be annually paid over to the Minister of Finance by the Administration—

- (a) in respect of the sale of intoxicating liquor and other articles on trains, one total sum of one thousand rand;
- (b) in respect of all departmentally conducted refreshment rooms or bars situated at any one station or airport, in which intoxicating liquor is sold, one total sum equal to the sum payable in respect of a bar licence in the district in which such station or airport is situated;
- (c) in respect of all departmentally conducted refreshment rooms situated at any one station or airport, in which no intoxicating liquor is sold, one total sum equal to the sum payable for similar privileges in the district in which such station or airport is situated.”.

Amendment of section 1 of Act 22 of 1960, as amended by section 11 of Act 62 of 1961.

7. Section *one* of the Railways and Harbours Service Act, 1960 (hereinafter called the “principal Act”), is hereby amended by the insertion after the definition of the expression “servant” of the following definitions:

“(xx)*bis* ‘staff association’ means an organization, representative of servants, which in terms of the regulations is officially recognized by the Administration as a staff association; (xviii)*bis*.

(xx)*ter* ‘strike’ means any one or more of the following acts or omissions by any number of servants—

(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 the terms or conditions of their employment, or the retardation by them of the progress of work or the obstruction by them of work; or

(b) the breach or unlawful termination by them of their contracts of employment;

if—

(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 Administration or any person by whom persons other than servants are or have been employed—

(aa) to agree to or comply with any demands or proposals concerning terms or conditions of employment or other matters made by or on behalf of servants or any of them or by or on behalf of other persons who are or have been employed; or

(bb) to refrain from giving effect to any intention to change terms or conditions of employment or, if such change has been made, to restore the terms or conditions to those which existed before the change was made; or

(cc) to employ or to suspend or to terminate the employment of any person; (xxi)bis.”.

Amendment of
section 18 of
Act 22 of 1960.

8. Section *eighteen* of the principal Act is hereby amended—

(a) by the addition to sub-section (4) of the words “and the decision by virtue of which the punishment is imposed, shall be deemed to be given at the time when the servant is so notified thereof”;

(b) by the substitution, for sub-section (5), of the following sub-section:

“(5) (a) If a servant is accused of an act or omission alleged to constitute a disciplinary infringement, or if he is prosecuted for a criminal offence, whether the prosecution be initiated by way of his arrest or otherwise, he may, if the circumstances are considered such as to warrant suspension, be suspended from duty until the prosecution is withdrawn or the decision on the departmental or the criminal charge, as the case may be, has been given, and the suspension may, if deemed necessary, be continued pending the result of an appeal against any such decision. If a servant was temporarily suspended in the first instance by someone other than the officer dealing with the case, the suspension shall be confirmed in writing by such officer as soon as possible and shall be with loss of emoluments for the period of suspension.

(b) An order of suspension may be withdrawn at any time if, in the opinion of the officer dealing with the case, the circumstances are such as to warrant the withdrawal of the suspension.

(c) For the purposes of this sub-section the expression ‘officer dealing with the case’ shall mean any officer who, in terms of the regulations, has authority to take disciplinary action against the servant.”;

(c) by the substitution, for sub-section (6), of the following sub-section:

“(6) If the servant charged is acquitted, the emoluments withheld during the period of suspension shall be paid to him. If he is found guilty of a disciplinary infringement, the officer dealing with the case shall decide whether loss of emoluments during the said period shall be maintained or whether the emoluments so withheld shall be paid to him in full or in part.”;

(d) by the addition thereto of the following new sub-section:

“(7) (a) Whenever a servant has been temporarily suspended in terms of sub-section (5) or whenever circumstances have arisen which justify his suspension in terms of that sub-section, the officer dealing with the case may, instead of ordering the servant’s suspension or, if the servant has already been temporarily suspended, after having confirmed the temporary suspension, give the servant an opportunity of electing in writing to serve in such post of a lower grade and at such reduced salary or wage as the said officer may indicate: Provided that such salary or wage shall not be less than that fixed for the lowest notch on the scale applicable to such post.

(b) If the servant concerned so elects, the order of suspension shall be withdrawn (if he is then already under suspension) and he shall be required to serve in such lower-graded post and at such reduced salary or wage as aforesaid, pending the final disposal of the disciplinary or the criminal

charge against him: Provided that the officer dealing with the case may at any time prior to the final disposal of such charge, allow the servant to resume duty in his former post and at his former salary or wage, or may place the servant under suspension, if in his opinion the circumstances warrant such action: Provided further that, except where a punishment of reduction in rank, grade or class or a more severe punishment has been imposed on him pursuant to a disciplinary charge, such servant shall be allowed to resume duty in his former post and at his former salary or wage as soon as possible after the date upon which the disciplinary charge is disposed of by the officer dealing with the case or, as the case may be, the date upon which the said officer decides that no disciplinary action is to follow upon any criminal proceedings which may have been instituted against the servant.

- (c) Save as otherwise provided in paragraph (e) of this sub-section, if the servant is acquitted on a departmental charge, the difference between his normal salary or wage and that earned by him while serving in the lower-graded post shall be paid to him. If the servant is found guilty of a disciplinary infringement the officer dealing with the case shall decide whether the said difference in salary or wages shall be withheld from him or whether it shall be paid to him in full or in part.
- (d) If the servant has been prosecuted on a criminal charge and is acquitted by the court or the criminal charge is withdrawn, the said difference in salary or wages shall be paid to him unless—
- (i) disciplinary action is taken against him in accordance with sub-section (5) of section *nineteen*; or
 - (ii) the officer dealing with the case in his discretion decides that the whole or any part of the said difference is not to be paid to the servant.
- (e) If the servant has been prosecuted on a criminal charge and is convicted by the court, the following provisions shall apply in connection with the payment or withholding of the said difference in salary or wages:
- (i) If the sentence imposed by the court is such as is referred to in paragraph (a) of sub-section (4) of section *nineteen*, no portion of the said difference shall be paid to him.
 - (ii) If the sentence by the court is such as is referred to in sub-paragraph (i) of paragraph (b) of the said sub-section, and his conviction is not followed by disciplinary action, the said difference shall not be paid to him unless the officer dealing with the case considers the circumstances to be such as to warrant payment of the said difference in full or in part.
 - (iii) If disciplinary action connected with or arising from the offence of which the servant was convicted, is initiated or proceeded with against him, the provisions of paragraph (c) of this sub-section shall apply in connection with the payment or withholding of the said difference in salary or wages in respect of the whole of the period during which the servant served in the lower-graded post prior to the date upon which the decision on the disciplinary charge is given: Provided that if the servant is acquitted on the disciplinary charge, the said difference shall not be paid to him in respect of the period up to the date upon which the criminal proceedings were finally disposed of, unless the officer

dealing with the case considers the circumstances to be such as to warrant the payment of the said difference in full or in part.

- (f) The payment or withholding of emoluments in respect of any period during which the servant was under suspension either prior or subsequent to any period of service in a lower-graded post pursuant to this sub-section, shall be dealt with in accordance with sub-section (6) of this section or paragraph (b) or (c) of sub-section (4) of section *nineteen*, whichever may be applicable.
- (g) For the purposes of this sub-section the expression 'officer dealing with the case' shall mean any officer who, in terms of the regulations, has authority to take disciplinary action against the servant."

Amendment of section 19 of Act 22 of 1960, as amended by section 1 of Act 43 of 1960.

9. Section *nineteen* of the principal Act is hereby amended—
(a) by the substitution, for sub-section (1), of the following sub-section:

"(1) (a) Whenever departmental disciplinary action has been initiated against a servant for any act or omission and a criminal prosecution in connection with the same act or omission has already been instituted or is thereafter instituted against him while such disciplinary action is pending, the servant shall as soon as practicable but in any event within fourteen days after the receipt of the disciplinary charge or the institution of the prosecution, as the case may be, in writing notify the officer dealing with the case of the fact that he is being so prosecuted.

(b) Whenever departmental disciplinary action is contemplated or has been initiated against a servant for an act or omission alleged to constitute a disciplinary infringement, and it is brought to the notice of the officer dealing with the case, whether by the servant himself or by any other person, that a criminal prosecution has been instituted against the servant in connection with the same act or omission, such departmental action shall, subject to the provisions of paragraph (c), be postponed or, if already initiated, shall be stayed, until the court has finally decided the criminal case or the prosecution is withdrawn.

(c) Whenever departmental disciplinary action is stayed in accordance with paragraph (b), the servant charged shall as soon as practicable be called upon by notice in writing to indicate in writing within fourteen days after receipt of the notice whether he desires the departmental disciplinary action to be proceeded with, and if he indicates as aforesaid that he so desires, such disciplinary action may thereupon be continued.

(d) If departmental disciplinary action is continued in accordance with paragraph (c), the servant shall be permitted to postpone any appeal he may desire to note against any decision given pursuant to such action, until fourteen days after the court has finally decided the criminal case or the prosecution is withdrawn."

(b) by the deletion of sub-section (3);

(c) by the substitution, for paragraphs (b) and (c) of sub-section (4), of the following paragraphs:

"(b) (i) If the punishment imposed by the court is not one which entails the servant's automatic dismissal from the Service in terms of paragraph (a), and his conviction is not followed by disciplinary action, he shall not be paid for the period under suspension unless an officer empowered to take disciplinary action against the servant considers the circumstances to be such as to warrant his being paid, or unless the said officer in his discretion decides that the whole or any part of the period of suspension shall be regarded as leave of absence as against any leave with pay which may be due to the servant.

(ii) If disciplinary action connected with or arising from the offence of which the servant was convicted, is initiated or proceeded

with against him, whether or not the suspension is continued, the provisions of sub-section (6) of section *eighteen* shall apply in connection with the payment or withholding of emoluments during the whole of the period of suspension preceding the date upon which the decision on the disciplinary charge is given: Provided that if the servant is acquitted on the disciplinary charge, he shall not be paid for the period under suspension up to the date upon which the criminal proceedings against him were finally disposed of, unless the officer dealing with the case considers the circumstances to be such as to warrant his being paid, or unless the said officer in his discretion decides that the whole or any part of that period of suspension shall be regarded as leave of absence as against any leave with pay which may be due to the servant.

(c) If a servant is acquitted by the court or the criminal charge is withdrawn, he shall be paid for the period of suspension unless—

(i) disciplinary action is taken against him in accordance with sub-section (5); or

(ii) an officer empowered to take disciplinary action against the servant in his discretion decides that the servant is not to be paid for the whole or any part of the period of suspension, in which event any part of the said period for which the servant is not paid, shall be treated either as leave of absence as against any leave with pay which may be due to the servant, or as leave without pay, or partly as leave with pay and partly as leave without pay.”;

(d) by the substitution for paragraphs (a) and (b) of sub-section (5), of the following paragraphs:

“(a) A servant in permanent employment who has been acquitted by a court on a charge of a criminal offence shall not be dealt with as for a disciplinary infringement for the same offence or for any other offence of which he could have been convicted on that charge: Provided that, except as provided in paragraph (b), he shall not thereby be exempt from being dealt with for a contravention or non-observance of a regulation, rule or instruction or an act or omission amounting to a disciplinary infringement in connection with the incident out of which the criminal charge arose.

(b) Any servant in permanent employment who has been criminally prosecuted for an offence under section *twenty-three*, *twenty-four* or *twenty-five* of this Act or under section *thirty-seven* of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957) and acquitted by the court, shall be exempt from a disciplinary charge or punishment for—

(i) the same offence; or

(ii) a contravention or non-observance of a regulation, rule or instruction, or any act or omission, which was cited in the criminal charge as an element of the offence of which he was acquitted.”.

Amendment of
section 20 of
Act 22 of 1960.

10. Section *twenty* of the principal Act is hereby amended—

(a) by the substitution, for that part of sub-section (1) which precedes paragraph (a), of the following: “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.”;

(b) by the deletion, in sub-paragraph (i) of paragraph (a) of the said sub-section (1), of the words “which shall not be recorded” and by the deletion, in sub-paragraph (ii) of that paragraph, of the words “(which shall not be recorded)”;

- (c) by the substitution, in sub-paragraph (i) of paragraph (b) of the said sub-section (1), for the words "written and recorded" of the words "in writing";
- (d) by the deletion, in sub-paragraph (ii) of the said paragraph, of the words "which shall be recorded";
- (e) by the substitution, in sub-paragraph (viii) of the said paragraph, for the words "the disciplinary infringement or any subsequent date" of the words "his suspension or, if he 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.";
- (f) by the substitution in sub-section (2), for the words "servant's record" of the words "record of a servant other than an apprentice";
- (g) by the addition to the said sub-section, of the following paragraph, the existing sub-section becoming paragraph (a):
 "(b) All punishments imposed upon an apprentice during the period of his apprenticeship shall be expunged from his record upon his appointment as an artisan.";
- (h) by the insertion, in paragraph (a) of sub-section (5), after the word "dismissed", of the words "or ordered to resign";
- (i) by the substitution, in paragraph (c) of the said sub-section, for the words "showing cause against the dismissal or reduction" of the words "cross-examining witnesses (except where, in accordance with the regulations, the evidence of a witness may be taken on affidavit), of calling witnesses in his defence, and of stating his case.";
- (j) by the substitution for paragraph (e) of the said sub-section of the following paragraph:
 "(e) An inquiry under this section shall be commenced not later than two months after a servant has been charged: Provided that where disciplinary action against a servant has been stayed in terms of paragraph (b) of sub-section (1) of section *nineteen*, and the servant has in terms of paragraph (c) of that sub-section indicated that he desires the disciplinary action to be proceeded with, the inquiry shall be commenced not later than three months after the servant was charged, and that where the servant has not indicated as aforesaid that he desires the disciplinary action to be proceeded with, the inquiry shall be commenced not later than two months after the prosecution is withdrawn or the decision of the court in the criminal case (including any decision on an appeal) has been given: Provided, further, that where a servant is charged whilst on authorized leave (including sick leave) or is granted leave (including sick leave) after he has been charged but before an inquiry has commenced, the inquiry shall commence not later than two months from the date of return of the servant to duty."

Amendment of
section 21 of
Act 22 of 1960.

11. Section *twenty-one* of the principal Act is hereby amended—

- (a) by the substitution, for paragraph (b) of sub-section (1), of the following paragraphs:
 "(b) As soon as practicable after receipt of the notice of appeal, the disciplinary appeal board shall review the case, and in doing so it may of its own motion hear any further evidence which it may deem necessary in order to arrive at a proper decision, and shall hear any further relevant evidence that may be tendered by the appellant or that may be tendered in support of the charge and the decision of the officer who dealt with the case, provided the said board is satisfied that there are good reasons why such evidence was not tendered at an earlier stage of the proceedings. The servant concerned shall be entitled to be present during the hearing of his appeal and shall be allowed to cross-examine witnesses.
- (b)*bis* If the appellant has intimated at or prior to the hearing of his appeal that he desires to tender

further evidence in terms of paragraph (b), the disciplinary appeal board may at the hearing, or the officer occupying the post of chairman of the disciplinary appeal board may, prior to the hearing, if the said board or officer considers it expedient under the circumstances to do so, set aside the decision and the punishment and refer the case back to the officer who dealt with it, with instructions to take or cause to be taken such further evidence as the board or the chairman, as the case may be, may indicate, and thereafter to arrive at a fresh decision and, if the case so requires, to impose punishment afresh. If the decision of the officer who dealt with the case was preceded by an inquiry in terms of sub-section (5) of section *twenty*, such inquiry shall be re-opened for the purpose of taking such further evidence, and the provisions of paragraph (c) of the said sub-section shall apply in connection with the proceedings at such re-opened inquiry. If the servant is again found guilty of a disciplinary infringement he shall be entitled to exercise afresh any right of appeal that may be available to him in terms of this section or the regulations.”;

- (b) by the substitution, for sub-section (8), of the following sub-section:

“(8) In dealing with an appeal under sub-section (7) the General Manager or the Railways and Harbours Board, as the case may be, may, subject to the proviso to sub-section (3) (which shall be deemed also to form a proviso to this sub-section) give such decision or make such order with respect to any matter forming the subject of the appeal as could have, and, in his or its opinion should have, been given or made by the prescribed officer, and the General Manager or the said Board, as the case may be, shall, in addition, make such order as to him or it seems proper with regard to the payment or withholding of emoluments during any period of suspension subsequent to the date on which punishment was first imposed.”;

- (c) by the substitution, for sub-section (13), of the following sub-section:

“(13) (a) A disciplinary appeal board shall, subject to the provisions of paragraph (c), consist of one servant nominated by the Administration and one servant nominated by the staff association representing the group of staff to which the appellant belongs, from the ranks of servants belonging to that group who are stationed in the district in which the appellant is stationed. An officer who decides a case or a servant who reports a disciplinary infringement may not act as a member of an appeal board dealing with such case.

- (b) (i) Any servant who, at the date of commencement of the Railways and Harbours Acts Amendment Act, 1963, holds office as an elected member or alternate member of a disciplinary appeal board shall be deemed to have been nominated in terms of paragraph (a) to serve as a member or alternate member of such board until the thirtieth day of June, 1963.

- (ii) Any servant who is nominated in terms of paragraph (a) to serve as a member or alternate member of a disciplinary appeal board in the place of an elected member or alternate member who has vacated his office prior to the thirtieth day of June, 1963, shall hold office until that date.

- (iii) Any servant who is nominated in terms of paragraph (a) to serve as a member or alternate member of a disciplinary appeal board on or after the first day of July, 1963, shall hold office for such period, not exceeding three years, as may be prescribed.

- (c) If a disciplinary appeal board cannot be properly constituted for the hearing of an appeal, for the reason that—

- (i) there is for the time being no representative of the staff who is competent to act as a member of the board for the hearing of that appeal; or
- (ii) no such representative who is competent so to act, is for the time being able to discharge his functions as a member of the board,
- any servant who represents the group of staff to which the appellant belongs as a member or alternate member of a disciplinary appeal board for a district other than that in which the appellant is stationed, may, with the consent of the appellant, act as a member of the disciplinary appeal board for the hearing of that appeal.”;
- (d) by the substitution, for sub-section (14), of the following sub-section:
 “(14) For the purpose of the nomination by staff associations of staff representatives on an appeal board, districts shall be prescribed, as also the procedure to be followed in connection with the nomination of such representatives and their alternates.”;
- (e) by the addition thereto of the following new sub-sections:
 “(17) The decision of any person or body empowered to deal with an appeal against punishment for a disciplinary infringement under this section or under any regulation, shall be deemed to be given at the time when the appellant is notified thereof in writing.
 (18) Any reference in this section to the payment or withholding of a servant’s emoluments during a period of suspension shall be deemed to include a reference to the payment or withholding, in terms of any provision of sub-section (7) of section *eighteen*, of the difference between a servant’s normal salary or wage and that earned by him in respect of any period during which he served in a lower-graded post at a reduced salary or wage in accordance with the provisions of that sub-section.”.

Amendment of section 22 of Act 22 of 1960.

12. Section *twenty-two* of the principal Act is hereby amended by the addition to paragraph (b) of sub-section (1) of the following proviso:

“Provided that at an inquiry under sub-section (5) of section *twenty* the servant charged shall not be entitled to have the assistance of any servant who would be competent to act as a member of a disciplinary appeal board to which the servant charged would be entitled to appeal in the event of a recorded punishment being imposed upon him: Provided further that at an appeal under section *twenty-one* at which the appellant is entitled to be present, he shall not be entitled to have the assistance of any servant who acted or would have been competent to act as a member of a disciplinary appeal board to which the servant charged has appealed, or to which he would have been entitled to appeal had he not waived his right of appeal in terms of sub-section (11) of section *twenty-one*.”.

Amendment of section 23 of Act 22 of 1960, as amended by section 14 of Act 62 of 1961.

13. Section *twenty-three* of the principal Act is hereby amended by the substitution in paragraph (a) for the words “while in charge of a locomotive or other engine, or while on duty as engine driver or fireman” of the words “while in charge of or on duty as a driver or other member of the crew of a locomotive or other engine”.

Substitution of new section for section 27 of Act 22 of 1960.

14. The following section is hereby substituted for section *twenty-seven* of the principal Act:

“Establishment of Conditions of Employment Advisory Board.
 27. (1) The State President shall establish a permanent board of reference to be known as the Conditions of Employment Advisory Board (hereinafter in this section called “the Board”) which shall consist of an equal number of servants nominated by the Administration and of servants nominated by the staff associations.

(2) The Board shall consider such matters affecting the staff as may be referred to it in manner prescribed and shall report thereon to the Minister.

(3) The Administration may, subject to the approval of the State President, make regula-

tions not inconsistent with this section with respect to the constitution, functions and procedure of the Board and the nomination of the members thereof.

(4) Any person who, immediately prior to the date of commencement of the Railways and Harbours Acts Amendment Act, 1963, was a member of the Conciliation Board referred to in this section as it existed immediately prior to that date, shall be deemed to have been duly nominated in terms of sub-section (1) to serve as a member of the Board until the thirtieth day of June, 1963.

(5) Any person who is nominated in terms of sub-section (1) to serve as a member of the Board in the place of a member referred to in sub-section (4) who has vacated his office prior to the thirtieth day of June, 1963, shall hold office until that date.

(6) Any person who is nominated to serve as a member of the Board on or after the first day of July, 1963, shall hold office for such period, not exceeding three years, as may be prescribed.”.

Substitution of new section for section 28 of Act 22 of 1960.

15. The following section is hereby substituted for section *twenty-eight* of the principal Act:

“Disputes between Administration and servants.

28. (1) Whenever representations have been made to the Administration by the staff associations jointly or by one or more staff associations individually, on behalf of the staff or on behalf of all or some of the members of any group of staff (as defined in sub-section (7)), in connection with an improvement in the conditions of service of the staff or of members of any such group, or other matters, and it has not proved possible to reach agreement, through the Conditions of Employment Advisory Board or otherwise, on any matter forming the subject of such representations, and a dispute consequently arises, or remains unsettled in regard to such matter, then unless the Administration is satisfied that—

- (a) in so far as such dispute is causing serious dissatisfaction amongst members of the staff, such serious dissatisfaction is confined to an insignificant number of the members of every group of staff concerned in the dispute; and
- (b) the public interest in general or the efficiency of the Service in particular is not likely to suffer if such dissatisfaction should continue to prevail,

the Administration shall report the matter to the State President.

(2) Whenever the circumstances affecting any such dispute have not been reported by the Administration to the State President by reason of its being satisfied as to the matters mentioned in paragraphs (a) and (b) of sub-section (1) and the staff association or associations concerned in the dispute has or have been notified accordingly, the Administration shall nevertheless be obliged to report the matter to the State President if there is presented to it thereafter a petition signed by the majority of the members of the staff association concerned in the dispute (or, if there are two or more such associations, then by the majority of the members of each such association), requesting the appointment of such a commission as is referred to in sub-section (3) to investigate the cause of such dispute.

(3) Upon the receipt of a report mentioned in sub-section (1) or (2) the State President shall, unless the dispute has been otherwise previously settled, appoint a commission of impartial persons to investigate the cause of the dispute and to make recommendations in regard thereto.

(4) A commission appointed under this section shall consist of three persons, none of whom shall be a servant of the Administration or an employee of a staff association. One of the members of the commission, who shall be the chairman, shall

if practicable be a judge or a former judge of the Supreme Court of South Africa, and one of them shall be a person nominated by the staff association representative of the servants involved in the dispute or, if there are two or more such staff associations, then by such staff associations in consultation with one another.

(5) The report and recommendations of the commission and of any member thereof shall be published in the *Gazette* as soon as reasonably possible after the receipt thereof by the Minister.

(6) The Administration shall be obliged to give effect, as expeditiously as reasonably possible, to every recommendation of the commission subscribed to by at least two of its members.

(7) For the purposes of this section any reference to a 'group of staff' or to a 'group' shall be construed as a reference to the grade or section of the staff or, as the case may be, to all the grades or sections of the staff, collectively, whose interests are for the time being represented by a particular staff association."

Insertion of new section in Act 22 of 1960.

16. The following section is hereby inserted after section *twenty-eight* of the principal Act:

"Prohibition of strikes.

28bis. (1) No servant or other person shall instigate a strike, or incite any servant to take part in or to continue a strike, and no servant shall take part in a strike or in the continuation of a strike.

(2) Whenever a servant or other person is charged under this section with having instigated a strike, or with having incited a servant 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 *one* and stated in the charge, is proved, it shall be presumed until the contrary is proved, that that 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.

(3) A servant or other person who contravenes the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred 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."

Amendment of section 29 of Act 22 of 1960.

17. Section *twenty-nine* of the principal Act is hereby amended by the substitution for the words "Conciliation Board" of the words "Conditions of Employment Advisory Board".

Amendment of section 32 of Act 22 of 1960.

18. Section *thirty-two* of the principal Act is hereby amended by the substitution, in paragraph (i) of sub-section (1), for the word "election" of the word "nomination".

Amendment of section 1 of Act 39 of 1960, as amended by section 15 of Act 62 of 1961.

19. Section *one* of the Railways and Harbours Superannuation Fund Act, 1960, is hereby amended by the insertion after the definition of the term "servant" of the following definition:

"(xxiv)*bis* 'staff association' means an organization representative of servants which in terms of the regulations is officially recognized by the Administration as a staff association; (xxiv) *bis*."

Amendment of section 4 of Act 39 of 1960.

20. Section *four* of the Railways and Harbours Superannuation Fund Act, 1960, is hereby amended by the substitution for sub-section (2) of the following sub-section:

"(2) (a) The committee shall consist of servants half of whom, together with their alternates, shall be nominated by the Administration, and half together with their alternates shall be nominated by the staff associations.

(b) Any person who, immediately prior to the date of commencement of the Railways and Harbours

Acts Amendment Act, 1963, was an elected member or alternate member of the committee, shall be deemed to have been duly nominated in terms of paragraph (a) to serve as a member of the committee until the thirtieth day of June, 1963.

- (c) Any person who is nominated in terms of paragraph (a) to serve as a member of the committee in the place of a member referred to in paragraph (b) who has vacated his office prior to the thirtieth day of June, 1963, shall hold office until that date.
- (d) Any person who is nominated to serve as a member of the committee on or after the first day of July, 1963, shall hold office for such period, not exceeding three years, as may be prescribed.”.

Amendment of section 18 of Act 39 of 1960.

21. Section *eighteen* of the Railways and Harbours Superannuation Fund Act, 1960, is hereby amended by the addition of the following proviso at the end of sub-section (3):

“Provided that in the case of a member to whom the provisions of paragraph (c) of sub-section (1) of section *sixteen* of the Railways and Harbours Service Act, 1960, apply, the factor which in terms of sub-section (1) of this section is applicable to the age of fifty-five years shall be used for the purpose of calculating such cash payment, and that in the case of a member to whom the provisions of paragraph (d) of the first-mentioned sub-section apply, the factor which in terms of sub-section (1) of this section is applicable to the age of fifty years shall be used for that purpose irrespective, in either case, of the age of the member concerned.”.

Amendment of section 27 of Act 39 of 1960, as substituted by section 18 of Act 62 of 1961.

22. Section *twenty-seven* of the Railways and Harbours Superannuation Fund Act, 1960, is hereby amended by the insertion in paragraph (b) after the word “dismissal” of the words “or enforced resignation.”.

Amendment of section 29*bis* of Act 39 of 1960, as inserted by section 19 of Act 62 of 1961.

23. Section *twenty-nine bis* of the Railways and Harbours Superannuation Fund Act, 1960, is hereby amended by the insertion in paragraph (b) of sub-section (1) after the word “dismissal” of the words “or enforced resignation”.

Amendment of section 32 of Act 39 of 1960.

24. Section *thirty-two* of the Railways and Harbours Superannuation Fund Act is hereby amended—

- (a) by the insertion in sub-section (2) after the word “member” where it occurs for the first time, of the words “or annuitant”;
- (b) by the substitution, for sub-section (3), of the following sub-sections:

“(3) A member or annuitant may by written notice in his lifetime to the Administration in manner prescribed, direct that a child whom he has legally adopted under the provisions of any Act relating to the adoption of children shall, for the purpose of this section, be treated as a legitimate child of the member or annuitant, and in that event such child shall, upon the death of the member or annuitant, be deemed to be a legitimate child.

(3)*bis* For the purposes of this section, the mother of an illegitimate child of the deceased member or annuitant, or a dependent illegitimate child, or a dependent adopted child who has not been legally adopted as aforesaid or who has been legally adopted as aforesaid but is not deemed to be a legitimate child in terms of sub-section (3), shall, where there is no widow or legitimate child, have respectively the same rights as a widow and a legitimate child.”.

Amendment of section 42 of Act 39 of 1960.

25. Section *forty-two* of the Railways and Harbours Superannuation Fund Act, 1960, is hereby amended by the substitution, in paragraph (l) of sub-section (1), for the words “election by members of the Fund and the New Fund of representatives” of the words “nomination by staff associations of members of the Fund or the New Fund”.

Amendment of section 58 of Act 39 of 1960.

26. Section *fifty-eight* of the Railways and Harbours Superannuation Fund Act, 1960, is hereby amended—

- (a) by the insertion in paragraph (a)—
- (i) after the words “retires or is” of the words “ordered to resign or is”;
 - (ii) after the word “retirement” of the words “enforced resignation”; and
 - (iii) after the words “being so” of the words “ordered to resign,”;
- (b) by the insertion in paragraph (b)—
- (i) after the words “retires or is” of the words “ordered to resign or is”;
 - (ii) after the word “retirement” where it occurs for the second time, of the words “enforced resignation,”; and
 - (iii) after the words “being so” of the words “ordered to resign,”.

Validation of certain changes in conditions of employment.

27. All changes in conditions of employment for which provision is made in any regulation published under any Government Notice mentioned in the Schedule to this Act, and which were brought into operation with retrospective effect or in respect whereof the amending regulations were not approved by the State President until after the expiration of the period of three months mentioned in sub-section (3) of section *thirty-two* of the Railways and Harbours Service Act, 1960 (Act No. 22 of 1960), are hereby validated with effect from the dates as from which such changes were respectively brought into operation.

Application of Act to South-West Africa.

28. This Act, with the exception of section *two*, shall apply to the territory of South-West Africa.

Short Title.

29. This Act shall be called the Railways and Harbours Acts Amendment Act, 1963.

Schedule.

<i>Number of Government Notice.</i>	<i>Date of Publication.</i>
R 72	16.6.61.
R 178	7.7.61.
R 204	7.7.61.
R 513	25.8.61.
R 538	25.8.61.
R 539	25.8.61.
R 582	1.9.61.
R 655	15.9.61.
R 343	9.3.62.
R 842	1.6.62.
R 843	1.6.62.
R 1316	17.8.62.
R 1317	17.8.62.
R 1319	17.8.62.
R 1321	17.8.62.