

CHAPTER 386

THE SEVERANCE ALLOWANCE ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 386

THE SEVERANCE ALLOWANCE ACT

An Act to provide for the payment of allowances to employees on the termination of their employment in certain circumstances.

[5th October, 1962]

R.L. Cap. 487

Acts Nos.

57 of 1962

81 of 1962

36 of 1964

62 of 1964

35 of 1965

24 of 1966

1 of 1975

2 of 1988

13 of 1991

[PCh386s1]1. Short title

This Act may be cited as the Severance Allowance Act.

[PCh386s2]2. Interpretation

(1) In this Act, unless the context otherwise requires—

"casual employee", "contract of service", "employee" and "employer" have the meanings respectively assigned to those expressions in the Employment Act; and

"dependant" means a member of the family of an employee who was wholly or in part dependent upon his earnings at the time of his death, and, where the employee, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child or parent or grandparent respectively:

Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provisions of the ordinary necessities of life suitable for persons in his class and position.

(2) For the purposes of this Act, a contract of service shall be deemed not to expire if the parties thereto are presumed, under the provisions of section 30 of the Employment Act *, to have entered into a new contract of service.

(3) Subject to the provisions of paragraphs (i) and (ii) of the proviso to paragraph (a) of subsection (3) of section 5, and of section 9, for the purposes of this Act, continuous employment means the employment of an employee by an employer under one contract of service, or under more than one contract of service where the intervals between any one such contract and the next succeeding contract do not exceed twenty-eight days; and an employee shall be deemed to be in employment at any time when he is on leave of absence with or without pay and during any period in respect of which he is in receipt of any retainer from a former employer, other than any sum in the nature of a pension in consideration of his returning to the employment of such former employer, and such former employer shall be deemed to be an employer during any period in respect of which any such retainer is paid.

[PCh386s3]3. Employers to pay severance allowance in certain cases Act No. 2 of 1988

Subject to the provisions of this Act, where an employee has been in the continuous employment of an employer for a period of three months or more and, on or after the twenty-fifth day of June, 1962 (or, in a case to which paragraph (c) refers, the commencement of Part III of the Security of Employment Act * 1)–

- (a) (i) the employment is terminated by the employer; or
- (ii) such employee's contract of service expires,

and either the employer fails to offer to re-employ the employee or to renew the contract, as the case may be, forthwith at the same place of work, and at a wage not less than the wage at which he was employed immediately before such termination or expiry, and, if such employee accepts the offer to re-employ him or renew his contract accordingly or, in the case of those contracts to which sections 49 and 56, or section 58, as the case may be, of the Employment Act * refer, the maximum periods of service and re-engagement as prescribed in the relevant section have expired; or

(b) the employment is lawfully terminated by the employee, or the employee's contract of service expires and he refuses to renew the contract of service, on account of his incapacity due to old age or to illness or injury not occasioned by his own serious and wilful misconduct; or

(c) the employment is lawfully terminated by the employee, or the employee's contract of service expires and he refuses to renew the contract of service, and the appropriate Conciliation Board established under the Security of Employment Act *, is satisfied, after reference to it and inquiry into the circumstances, that the employer has unlawfully assaulted the employee and that the employee has terminated the employment or refused to renew the contract by reason thereof, and gives its certificate to that effect; or

(d) such employee dies in the service of his employer, otherwise than as a result of an accident occasioned by his own serious and wilful misconduct, leaving a dependant or dependants; or

(e) the contract of service of such employee is terminated in the circumstances set out in sections 20, 21 or 22 of the Employment Act * or otherwise by operation of law,

where an employee leaves the employment under circumstances which would otherwise qualify him for payment of terminal benefits under any other law or regulation irrespective of his salary had he been governed by such law or regulation, the employer shall pay to the employee, or, in the case referred to in paragraph (c), to his dependants, a severance allowance:

Provided that when an employee who has completed a contract to which sections 49 and 56 of the Employment Act refer and who is re-engaged by his employer on the statutory terms as defined in section 36 of the Security of Employment Act *, severance allowance shall not be payable to or in respect of such employee by reason of the expiry of the maximum periods of service or re-engagement, as defined in the relevant sections of the Employment Act *; or

[PCh386s4]4. Circumstances in which severance allowance not payable

(1) An employer shall not be liable to pay any severance allowance to or in respect of any employee who—

(a) for a period of not less than nine months immediately preceding the cessation of his employment or, where he had been employed by the employer for less than nine months, for

the whole period of his employment, was in receipt of wages at a rate exceeding eight thousand four hundred shillings per annum, or equivalent rate for lesser periods than a year; or

(b) immediately before the cessation of this employment was a casual employee; or

(c) was summarily dismissed for lawful cause; or

(d) when offered by his employer re-employment or a renewal of a contract of service to commence forthwith upon the termination of his previous employment or the expiry of his previous contract at the same place of work, and at a wage not less than the wage at which he was employed immediately before such termination or expiry, refuses or neglects to accept such offer:

Provided that nothing in this paragraph shall exempt an employer from liabilities to pay severance allowance to any employee—

(i) whose contract of service was terminated in the circumstances set out in section 21 or 22 of the Employment Act *; or

(ii) whose employment was terminated, or whose contract of service expired and was not renewed, on the grounds set forth in paragraph (b) of section 3 of this Act; or

(iii) where, in the case of contracts to which sections 49 and 56, or section 58, of the Employment Act * refer, the maximum periods of service and re-engagement as prescribed in the relevant section have expired.

(2) The Government, the Tanzania Authority; the Tanzania Railways Corporation and the Tanzania Communications Commission shall not be liable to pay any severance allowance to, or

in respect of, any employee who immediately before the cessation of his employment was employed by or under the Government, or either such Corporation as the case may be, on pensionable terms, whether or not such employee was employed in a substantive appointment.

(3) [Omitted: R.E. 1995 *.]

(4) The Government is not liable to pay any severance allowance to, or in respect of, a member of the Defence Forces or national service in respect of his employment. [ss. (3A)]

(5) Where any employee who is not incapacitated by reason of old age or by illness or injury which was not occasioned by his own serious and wilful misconduct, gives notice to terminate or terminates any oral contract of service, or informs his employer that he does not intend to enter into a further contract of service at the expiration of his current contract of service, the employer shall not be liable to pay any severance allowance to or in respect of that employee, unless he dies before the notice or the current contract of service, as the case may be, expires, or unless the case falls within the provisions of paragraph (c) of section 3. [ss. (4)]

[PCh386s5]5. Calculation of severance allowance

(1) Subject to any reduction which may be made under this Act, the amount of the severance allowance which an employer is liable to pay to or in respect of an employee shall be calculated in accordance with the provisions of this section.

(2) Subject to the provisions of subsections (3) and (4) the severance allowance payable to an employee by the employer shall be an amount equal to five per centum of the amount arrived at by multiplying the annual rate of wages to which the employee was entitled

immediately before the cessation of his employment by the total number of full years during which he was in the continuous employment of the employer.

(3) In calculating severance allowance—

(a) any period taken into account for the purpose of any previous severance allowance paid by the same employer to the same employee shall be deducted from the period of employment taken for calculation:

Provided that where an employee who has been paid a severance allowance by an employer is re-employed by that employer within a month of such payment, he shall be entitled to return the allowance to his employer and where he does so, then on the next cessation of his employment with such employer—

(i) his employment with the employer during the former period shall be deemed to have been continuous with the employment then ceasing and the break in employment shall be disregarded; and

(ii) both the former period of employment and the employment then ceasing shall be taken into account in calculating the severance allowance payable;

(b) any period preceding an occasion on which, had the employment then ceased, the employer would not have been liable to pay a severance allowance by reason of the provisions of sections 4, 6 or 7 of this Act, shall be deducted from the period of employment taken for calculation:

Provided that an act which constitutes lawful cause for the summary dismissal of an employee shall not, unless the employee is thereupon dismissed, constitute an occasion to which this paragraph refers;

(c) any period when the employee is serving a sentence of imprisonment or otherwise detained in lawful custody, is suspended without pay in the circumstances specified in subsection (3) of section 29 of the Security of Employment Act *, or is absent from his work without leave shall be deducted from the period of employment taken for calculation;

(d) no account shall be taken of any period prior to the commencement of Part V of the Security of Employment Act *, during which the employee was serving under a contract of service to which section 34 of the Employment Act * (as then in force) referred.

(4) No period of employment prior to the twenty-fifth day of June, 1952, shall be taken into account for the purposes of calculation of the severance allowance; but periods of employment after that date shall be taken into account for such purposes if continuous with periods of employment after the twenty-fourth day of June, 1962.

(5) For the purposes of subsection (2)–

(a) where an employee was employed by the employer for less than a year, he shall be deemed to have been employed for one full year;

(b) where the period of continuous employment exceeds a full year, or a number of full years–

(i) by less than six months, such number of months shall be ignored;

(ii) by more than six months, such number of months shall count as one full year;

(c) the annual rate of wages to which an employee was entitled immediately before the cessation of his employment shall be ascertained—

(i) where the employee was paid monthly, by multiplying the monthly wage to which he was entitled immediately before the cessation of his employment by twelve;

(ii) where the employee was paid daily, by multiplying the daily wage to which he was entitled immediately before the cessation of his employment by three hundred and sixty;

(iii) in any other case by first ascertaining the daily wage by dividing the amount of the wages to which the employee was entitled immediately before the cessation of his employment by the number of days in the period to which the wages were referable, and multiplying such daily wage by three hundred and sixty.

[PCh386s6]6. Employees eligible for pensions and provident fund benefits

(1) Where an employer has established an approved pensions fund or scheme for the benefit of his employees and an employee or any dependant of such employee dying in the service of such employer is granted any pension on the cessation of such employee's employment—

(a) if the sum produced by multiplying the annual amount of such pension by a factor of twelve and one-half equals or exceeds the amount of the severance allowance calculated in

accordance with section 5, the employer shall be exempt from liability to pay any severance allowance to or in respect of such employee; or

(b) if the sum produced by multiplying the annual amount of such pension by a factor of twelve and one-half is less than the amount of the severance allowance calculated in accordance with section 5, the amount of the severance allowance so calculated shall be reduced by the sum so produced.

(2) Where an employer has established an approved provident fund or scheme for the benefit of his employees and an employee or any dependant of an employee dying in the service of the employer is granted any benefit from such fund or scheme on the cessation of his employment—

(a) if the benefit granted out of the fund or scheme, after deducting any contributions made thereto by the employee, equals or exceeds the amount of the severance allowance calculated in accordance with section 5, the employer shall be exempt from liability to pay any severance allowance to or in respect of such employee; or

(b) if the benefit granted out of the fund or scheme, after deducting any contributions made thereto by the employee, is less than the amount of the severance allowance calculated in accordance with section 5, the amount of the severance allowance so calculated shall be reduced by the amount of the residue of the benefit after making such deductions.

(3) Where an employer has made in respect of any employee a statutory contribution to the National Provident Fund established by the National Provident Fund Act *, for any period which is taken into account in calculating, in accordance with this Act, the severance allowance

payable by the employer, the amount of the severance allowance for that period may be reduced by the sum of the statutory contributions made during that period in respect of that employee, less the sum which such employer deducted as the employee's share. [ss. (2A)]

(4) In this section "an approved pensions fund or scheme" and "an approved provident fund or scheme" means a fund or scheme which an employer is expressly required or permitted by written law to establish, a fund or scheme established and maintained in accordance with regulations made under the Employment Act *, or a fund or scheme approved by the Labour Commissioner for the purposes of this Act. [ss. (3)]

[PCh386s7]7. Payments made on termination of employment under contracts made before enactment of this Act

Where an employer is liable to pay a severance allowance to or in respect of an employee on the cessation of any employment which commenced before the date on which this Act is enacted, and—

(a) a gratuity, bonus or terminal allowance is paid to the employee on the cessation of his employment in accordance with the terms of the employment agreed between the parties before the date of such enactment or under the provisions of any law providing for the payment of gratuities to public officers; or

(b) the employer has, during the course of, or at the cessation of, the employment and prior to the date on which this Act is enacted, made any payment or given any valuable consideration for or on account of a benefit for the use of the employee after the cessation of his

employment, and being a payment or gift which was either gratuitous or was made in accordance with the terms of the employment,

then, if such gratuity, bonus, allowance, payment or the value of such consideration, as the case may be, after deducting any contribution made by the employee, equals or exceeds the amount of the severance allowance calculated in accordance with section 5, the employer shall be exempt from liability to pay any severance allowance to or in respect of such employee, or if it is less, the amount of the severance allowance shall be reduced by the amount of the residue of such gratuity, bonus, allowance, payment or value of such consideration, after making such deductions.

[PCh386s8]8. Payments under Workers' Compensation Act for death or permanent total incapacity

Where, on the cessation of any employee's employment, an employer pays to the employee or to a dependant, (within the meaning of that term in the Workers' Compensation Act *), any compensation under the Workers' Compensation Act on account of the death or permanent total incapacity of the employee, the employer shall be exempt from liability to pay any severance allowance to or in respect of such employee.

[PCh386s9]9. Continuous employment by more than one employer

(1) Notwithstanding the foregoing provisions of this Act, an employee shall not be entitled to a severance allowance where, after this section comes into operation—

(a) his employment by partners ceases on the dissolution of the partnership, if either he enters the employment of one or more of such partners, or of such partner or partners and of any new partner, forthwith after such dissolution, or he is offered employment on the prescribed terms by one or more of such partners, or by such partner and any new partner; or

(b) his employer dies, if either he enters the employment of the personal representative, or the widow, widower or any heir of the deceased employer forthwith after such death, or he is offered employment on the prescribed terms by any such persons or person; or

(c) his employment by a corporate body ceases on the dissolution of that body, if either he enters the employment of some other corporate body in accordance with the provisions of any enactment or in accordance with any scheme of reconstruction forthwith after such dissolution, or he is offered employment on the prescribed terms by some other body corporate in accordance with any scheme of reconstruction; or

(d) he is employed in the business of his employer and his employment by that employer ceases on the disposal by that employer of the goodwill, or of the whole or a substantial part, of that business, or of that part of the business in which he is employed, if either he enters the employment of the person who acquires the same forthwith after such disposal, or he is offered employment on the prescribed terms by such person,

nor shall the employer first named in the relevant paragraph be liable to pay the allowance in any such circumstances.

(2) Where any employee, to whom an offer on the prescribed terms is made in any of the circumstances described in subsection (1), accepts such offer, he shall be deemed to enter the

employment of the person by whom the offer is made forthwith upon the cessation of his employment with the employer first named in the relevant paragraph of that subsection.

(3) Where an employee ceases to be in the employment of one employer and enters or is deemed to enter the employment of another in any of the circumstances described in subsection (1) and (2)–

(a) the employment of the employee by such first named employer and such second named employer, and by any other employer, employment by whom is, under any of the provisions of this section, deemed to be continuous with employment by such first named employer shall be deemed to be continuous employment by one employer; and

(b) if such continuous employment ceases thereafter in circumstances in which the severance allowance is payable under the provisions of this Act, the employer in whose service the employee was employed immediately before such cessation, shall be deemed to be the employer during the whole of the period which is, in accordance with paragraph (a) of this subsection, deemed to be a period of continuous employment by one employer, and shall be liable to pay the severance allowance accordingly:

Provided that–

(i) nothing in this subsection shall render any employment continuous with any employment previous to any break between contracts of service, not being leave of absence or any such periods of retainer as are referred to in subsection (3) of section 2 exceeding twenty-eight days; and

(ii) any employer who is liable to pay the severance allowance in the circumstances described in this subsection, shall be entitled to deduct any period, and to make any reduction, which any previous employer in that continuum would have been entitled to deduct or to make, had such previous employer become liable to pay the severance allowance, and shall be exempt from any liability in respect of any period for which any such previous employer was so exempt.

(4) In subsections (1) and (2)–

"business" means any business, undertaking or occupation whether or not carried on for profit;

"prescribed terms" means terms whereby the employment is to commence forthwith upon the cessation of employment with the immediately preceding employer, at the same work and the same place of work and at a wage not less than the wage at which the employee was last employed by the immediately preceding employer; and shall include a term that the offer shall not be revoked at any time before the cessation of such employment;

"references to the cessation of employment on any occasion" shall be construed as references to the cessation of employment with an employer on account of the employer ceasing to exist or to carry on business in whole or part on that occasion.

(5) For the avoidance of doubt it is hereby declared that, for the purposes of paragraph (b) of subsection (3), the qualifying period of three months prescribed in section 3 shall be reckoned from the commencement of the period deemed to be a period of continuous employment by one employer.

(6) For the avoidance of doubt it is hereby declared that, except in any such case referred to in paragraph (a), (b), (c) or (d) of subsection (1), the novation or transfer of a contract of service from one employer to another constitutes a termination of the employment of the employee by such first named employer.

[s. 8A]

[PCh386s10]10. Severance allowance to be in addition to other liabilities

Subject to the provisions of sections 6, 7 and 8, liability to pay severance allowance shall be in addition to any other liability of the employer under the terms and conditions of employment or by law, but shall be subject to the same rights of set-off or counterclaim as are available against wages or any other benefit under a contract of service.

[s. 9]

[PCh386s11]11. Time and manner of payment

(1) Where severance allowance is payable to an employee, it shall be paid on the cessation of the employment or on the grant of any leave of absence pending the cessation of employment, whichever is the earlier:

Provided that where the employer is informed by the employee that the employee proposes to refer the termination of his employment to a Conciliation Board under the provisions of Part IV of the Security of Employment Act *, the employer may withhold the severance allowance until—

(a) if no reference is made to such Board within the time limited therefor in the said Act, the expiry of that time; or

(b) the abandonment of the reference; or

(c) the communication to the employer of the decision of the Board on the reference, whichever first occurs.

(2) Where severance allowance is payable to a dependant or dependants of an employee, it shall be paid within seven days of the death of the employee to the widow of the employee or, if there is no widow, to any other adult dependant, or in either case, to the District Commissioner, as the case may be, or to a Labour Officer.

(3) The District Commissioner, as the case may be, or a Labour Officer, to whom any severance allowance shall have been paid—

(a) shall forthwith issue a receipt for the severance allowance paid;

(b) shall, as soon as may be, institute inquiries as to the dependants of the employee and, when he ascertains the identity of the dependants, refer the distribution of the severance allowance to a district or local court and distribute the severance allowance in accordance with the direction of the court:

Provided that where the dependants include a minor child or minor children, his or their shares shall be paid to his or their mother, or if she is dead to some other adult person having custody of the child or children;

(c) if, after a period of one year has elapsed and notwithstanding his inquiries, he has been unable to trace any dependant of the employee, he shall notify the employer and, if so required by the employer, within a period of six months after such notification, shall return the severance allowance to the employer, or, if he is not so required, shall pay the severance allowance into the Consolidated Fund.

(4) A court to which a reference has been made under this section, shall direct the distribution of the severance allowance among the dependants in such proportion as it considers just and equitable.

(5) The widow or other dependant of an employee to whom any severance allowance has been paid shall divide the severance allowance equally between the dependants and shall pay the shares to the dependants:

Provided that where the dependants include a minor child or minor children, his or their shares shall be paid to or retained by his or their mother or, if she is dead, some other adult person having custody of the child or children.

(6) Where any severance allowance is payable to the dependants of an employee, an employer who pays the severance allowance in accordance with the provisions of subsection (3) shall be discharged from all liability in respect of the application thereof.

[s. 10]

[PCh386s12]12. Recovery of severance allowance by suit

The amount of any severance allowance which an employer is required to pay to or in respect of an employee, may be recovered by the employee, or, in the event of his death, by any of his dependants, by suits as a debt due to such employee or to such dependant.

[s. 11]

[PCh386s13]13. Failure to pay severance allowance

Any employer who is liable to pay severance allowance to an employee or to the dependants of an employee, who fails to pay such severance allowance in the manner and within the time provided in this Act shall, unless—

(a) he has reasonable and probable cause for thinking that the severance is not due, or, in the case of any part payment, that the balance is not due; or

(b) he satisfies the court he is insolvent,

commit an offence and is liable upon conviction to a fine not exceeding five thousand shillings, or in the case of a second or subsequent conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months or to both.

[s. 12]

[PCh386s14]14. Application of Part XII of the Employment Act

The provisions of Part XII of the Employment Act shall apply mutatis mutandis in relation to any question, difference or dispute between an employer and an employee or a dependant of an employee arising out of the payment or non-payment of severance allowance as

those provisions apply in relation to questions, differences and disputes as to the rights or liabilities of parties to a contract of service, and in particular, the provisions of section 138 shall apply mutatis mutandis to proceedings in relation to severance allowances as they may apply to proceedings in relation to wages.

[s. 13]

[PCh386s15]15. Omitted

[Omitted: R.E. 2003.]

[s. 14]