

TANGANYIKA



No. 57 OF 1962

I ASSENT,

*Rh Tumbo*

*Governor-General*

4TH OCTOBER, 1962

**An Act to provide for the Payment of Allowances to Employees on the Termination of their Employment in certain circumstances**

[5TH OCTOBER, 1962]

ENACTED by the Parliament of Tanganyika.

1. This Act may be cited as the Severance Allowance Act, 1962.

Short title

2.-(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 Ordinance; and

Interpretation

Cap. 366

"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 provision 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 Ordinance, 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, 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 one day; 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 return-

ing 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.

(4) For the purposes of this Act, an employee shall not cease to be in the continuous employment of an employer solely by reason of any change of the employer, if-

- (a) the employee is employed by partners, and there is a change of partners; or
- (b) the employee was employed by an employer who died and the employment was continued without a break by the personal representatives, widow, widower or any heir of the deceased employer.

Employers to pay severance allowance in certain cases

3. 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-

- (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 Ordinance 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 same, 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) 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
- (d) the contract Of service of such employee is terminated in the circumstances set out in sections 20 or 21 or under section 22 of the Employment Ordinance.

the employer shall Pay to the employee, or, in the case referred to in paragraph (c), to his dependants, a severance allowance.

circumstances in which severance allowance not payable

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

- (a) immediately before the cessation of his employment, was-
  - W in receipt of wages at a rate exceeding eight thousand four hundred shillings Per annum or the equivalent rate in respect of lesser periods than a year;
  - (ii) a casual employee;
  - (iii) serving under a contract of service to which section 34 of the Employment Ordinance refers; or

- (b) was summarily dismissed for lawful cause; or
- (c) 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 liability to pay severance allowance to any employee-

- (i) whose contract of service was terminated in the circumstances set out in section 21 or under section 22 of the Employment Ordinance; 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 Ordinance refer, the maximum periods of service and re-engagement as prescribed in the relevant section have expired.

(2) The Government, the East African Common Services Organization or Authority, the East African Railways and Harbours Administration, or the East African Posts and Telecommunications Administration 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, the Organization or either such Administration, as the case may be, on pensionable terms, whether or not such employee was employed in a substantive appointment

(3) Neither the Government nor any local or native authority shall be liable to pay any severance allowance to, or in respect of, any person who was employed in any of the offices of Chief set out in the Schedule to the African Chiefs Ordinance.

Cap. 331

(4) For the avoidance of doubts it is hereby declared that where an 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.

**5.-**(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.

calculation  
of allowance

(2) Subject to the provisions of subsections (3) and (4) of this section, where, at the date of the cessation of employment, an employee has been in the continuous employment of the employer-

- (a) for a period of one year or less, the severance allowance shall be a sum equal to fifteen days' wages;

- (b) for a period of more than a year, the severance allowance shall be a sum equal to fifteen days' wages multiplied by the number of years during which he has been in such continuous employment.

For the purposes of paragraph (b), where the period of continuous employment exceeds a full year, or a number of full years, by more than six months, the additional months shall be counted as a year.

- (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 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 is absent from his work without leave shall be deducted from the period of employment taken for calculation.

(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 this section, wages shall be calculated in accordance with the rates to which the employee is entitled immediately preceding the cessation of the employment, and where wages are calculated by reference to periods other than a day, the daily wage shall be ascertained by dividing the wages so calculated by the number of days in that period or, in the case of periods of one or more months, by thirty in respect of each month in the period-

6.-(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-

- (d) 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 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 aforesaid.

(3) 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 ordinance, or a fund or scheme approved by the Labour Commissioner for the purposes of this Act.

7. 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
- (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 to or on account of his employee, being a payment or 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 allow-

Payments made on termination of employment under contracts made before enactment of Act

Payments  
under Work-  
men's  
compensation  
Ordinance for  
death or  
permanent  
total  
incapacity,  
cap. 263

Severance  
allowance to  
be in  
addition to  
other  
liabilities

Time and  
manner of  
payment

ance 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 aforesaid.

**8.** 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 Workmen's Compensation Ordinance) any compensation under the Workmen's Compensation Ordinance 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.

**9.** 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.

**10.**-(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.

(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 Area or District Commissioner, as the case may be, or to a Labour Officer.

(3) The Area or 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 same;
- (b) shall, as soon as may be, institute enquiries as to the dependants of the employee and, when he ascertains the identity of the dependants, refer the distribution of the allowance to a district or local court and distribute the 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 enquiries, 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 same into the Consolidated Fund.

(4) A court to which a reference has been made under this section, shall direct the distribution of the 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 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 same in accordance with the provisions of subsection (3) shall be discharged from all liability in respect of the application thereof.

**11.** 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 suit as a debt due to such employee or to such dependant.

Recovery of  
severance  
allowance  
by suit

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

failure to  
pay allowance

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

(b) he satisfies the court that he is insolvent,

be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings, or in the case of a second or subsequent conviction to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

**13.** The provisions of Part XI of the Employment Ordinance 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 apply to proceedings in relation to wages.

Application  
of part XI  
of the  
Employment  
Ordinance

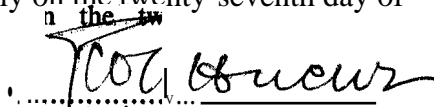
**14.** (1) Notwithstanding the foregoing provisions of this Act, an employer shall not be liable to pay any severance allowance to or in respect of an employee whose employment ceased between the 24th day of June, 1962, and the date on which this Act is enacted unless the employee, or, if he is dead, a person who would have been a dependant had the employee died on the date on which his employment ceased, gives notice to the employer in person or by writing, not later than one year after the enactment of this Act, or if the employer is absent from Tanganyika when this Act is enacted, not later than two years thereafter, that he claims the allowance.

Transitional

(2) Where an employee or a dependant claims a severance allowance under subsection (1) of this section, the allowance shall be paid within twenty-one days of the receipt of the claim, and in every case to which subsection (1) applies the provisions of sections 10 and 12 shall be read as if the time specified in this subsection were substituted for the time specified in subsections (1), and (2) of section 10.

(3) Subject to any prior termination of any contract to which this subsection applies, an employee employed on a ticket contract shall be deemed to be in continuous employment during the period of the ticket, and an employee employed under a written contract of service to complete a specified number of tickets shall be deemed to be in continuous employment during the whole period of that contract.

Passed in the National Assembly on the twenty-seventh day of September, 1962.

  
Clerk of the National Assembly