

No. 5315

**UNION OF SOUTH AFRICA
and
FEDERATION OF RHODESIA AND NYASALAND**

Exchange of notes constituting an agreement for the extension to South West Africa of the Arrangements for the compensation of workmen concluded by an exchange of notes of 21 January and 4 February 1949 between the Government of Southern Rhodesia and the Government of the Union of South Africa. Salisbury, 11 October 1958

Official text: English.

Registered by the Union of South Africa on 19 August 1960.

**UNION SUD-AFRICAINE
et
FÉDÉRATION DE LA RHODÉSIE ET DU NYASSALAND**

Échange de notes constituant un accord relatif à l'extension au Sud-Ouest africain des Arrangements concernant l'indemnisation des travailleurs conclus par un échange de notes des 21 janvier et 4 février 1949 entre le Gouvernement de la Rhodésie du Sud et le Gouvernement de l'Union sud-africaine. Salisbury, 11 octobre 1958

Texte officiel anglais.

Enregistré par l'Union sud-africaine le 19 août 1960.

No. 5315. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNION OF SOUTH AFRICA AND THE FEDERATION OF RHODESIA AND NYASALAND FOR THE EXTENSION TO SOUTH WEST AFRICA OF THE ARRANGEMENTS FOR THE COMPENSATION OF WORKMEN CONCLUDED BY AN EXCHANGE OF NOTES OF 21 JANUARY AND 4 FEBRUARY 1949 BETWEEN THE GOVERNMENT OF SOUTHERN RHODESIA AND THE GOVERNMENT OF THE UNION OF SOUTH AFRICA. SALISBURY, 11 OCTOBER 1958

I

UNION OF SOUTH AFRICA
OFFICE OF THE HIGH COMMISSIONER
SALISBURY

No. 57

11th October, 1958

Sir,

It being the desire of the respective Governments to extend to the territory of South West Africa the reciprocal arrangements adopted in an Exchange of Notes between the Government of Southern Rhodesia and the Government of the Union of South Africa dated the 21st January, 1949 (Salisbury) and 4th February, 1949 (Cape Town) respectively, in regard to matters relating to compensation to workmen for accidents arising out of and in the course of employment and causing disablement or death, I have the honour to inform you that the Government of the Union of South Africa agree to adopt, on condition of reciprocity, the following arrangements :

1. In this Exchange of Notes the term "Union of South Africa" includes the territory of South West Africa.
2. In any case where a workman is entitled to compensation both under the law of the Union of South Africa and under the law of Southern Rhodesia, such workman or his dependants shall be entitled to recover compensation under the law of one territory only.
3. In the case of an employer in the Union of South Africa whose workman is temporarily employed by such employer in Southern Rhodesia, the law applicable to such workman during the whole of any continuous period not exceeding twelve months during

¹ Came into force on 25 September 1959, in accordance with the provisions of paragraph 10.

which he is so employed in Southern Rhodesia shall be the law of the Union of South Africa. If the employment in Southern Rhodesia continues after such period of twelve months, the law applicable after such period shall be the law of Southern Rhodesia.

Reciprocally, in the case of an employer in Southern Rhodesia whose workman is temporarily employed by such employer in the Union of South Africa, the law applicable to such workman during the whole of any continuous period not exceeding twelve months during which he is so employed in the Union of South Africa shall be the law of Southern Rhodesia. If the employment in the Union of South Africa continues after such period of twelve months, the law applicable after such period shall be the law of the Union of South Africa.

4. In the case of an employer who ordinarily carries on business both in the Union of South Africa and in Southern Rhodesia and who transfers a workman temporarily from the one territory to the other, the following provisions shall apply :

- (a) In the case of a workman temporarily transferred from the Union of South Africa to Southern Rhodesia, the law applicable to such workman during the whole of any continuous period not exceeding twelve months during which he is so employed in Southern Rhodesia shall be the law of the Union of South Africa. If the employment in Southern Rhodesia continues after such period of twelve months, the law applicable after such period shall be the law of Southern Rhodesia ;
- (b) Reciprocally, in the case of a workman temporarily transferred from Southern Rhodesia to the Union of South Africa, the law applicable to such workman during the whole of any continuous period not exceeding twelve months during which he is so employed in the Union of South Africa shall be the law of Southern Rhodesia. If the employment in the Union of South Africa continues after such period of twelve months, the law applicable after such period shall be the law of the Union of South Africa.

For the purposes of this paragraph a workman shall not be considered to have been temporarily transferred if in the opinion of the Commissioner for Workmen's Compensation in the territory from which he is transferred the transfer is made in accordance with the ordinary terms of the employment from a branch of the employer's business in one territory to a branch of the employer's business in the other territory.

5. To facilitate the administration of the matters covered by paragraphs 3 and 4 of this Note, it is agreed that regulations shall be published in the respective territories under which employers shall be obliged to give notice to the Commissioner for Workmen's Compensation in the respective territories in all cases before a workman is moved from the one territory to the other territory.

6. The Government of the Union of South Africa undertake to confer on their Commissioner for Workmen's Compensation power to admit evidence taken in Southern Rhodesia and to procure and take evidence for use in Southern Rhodesia or otherwise for the purpose of facilitating proceedings for the recovery of compensation under the laws of Southern Rhodesia.

Reciprocally, the Government of Southern Rhodesia undertake to confer on the High Court of Southern Rhodesia and on magistrates' courts power to admit evidence taken in the Union of South Africa and to confer on magistrates' courts power to procure and take evidence for use in the Union of South Africa or otherwise for the purpose of facilitating proceedings for the recovery of compensation under the laws of the Union of South Africa.

7. Compensation awarded in the one territory to persons resident or becoming resident in the other territory may be transferred to and administered by the Commissioner for Workmen's Compensation in such other territory.

8. The obligation in regard to insurance imposed upon employers in regard to the workmen to whom the provisions of paragraphs 3 and 4 of this Note apply, shall be determined by the law which is applicable to such workmen by virtue of the provisions of the said paragraphs.

9. The Government of the Union of South Africa and the Government of Southern Rhodesia will reciprocally lend their good offices to facilitate the administration of their respective laws in regard to compensation.

10. These arrangements shall come into operation on the date on which the last of all such things shall have been done to give this Agreement the force of law in the Union of South Africa and Southern Rhodesia respectively, and shall remain binding until terminated by notice in writing given by one or other of the two contracting parties, subject however to the conditions that it shall be terminated only with effect from the thirty-first day of December in any year and the notice shall be given not less than six months prior to such date.

11. This Agreement takes the place of that previously concluded between the Governments of the Union of South Africa and Southern Rhodesia and referred to in the preamble hereof.

If the foregoing proposals are acceptable, I suggest that this Note and your confirmatory reply thereto be regarded as constituting an Agreement between the two Governments in this matter.

I have the honour to be, Sir,
Your obedient Servant,

(Signed) R. KIRSTEN
High Commissioner

The Honourable Sir Roy Welensky, C. M. G., M. P.
Minister for External Affairs
of the Federation of Rhodesia and Nyasaland
Salisbury

II

MINISTRY OF EXTERNAL AFFAIRS
SALISBURY, SOUTHERN RHODESIA

100/86/30

11th October, 1958

The High Commissioner for the Union
of South Africa
Salisbury

Sir,

I have the honour to acknowledge receipt of your Note reference number 57 of today's date, reading as follows :

[*See note I*]

In reply thereto, I have the honour to inform you that your proposals are acceptable and that your Note and this present letter shall be regarded as constituting an agreement between the two Governments.

I have the honour to be, Sir,
Your obedient Servant,

(*Signed*) Roy WELENSKY
Minister of External Affairs