

wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act [45 U.S.C. 151 et seq.], except in accordance with section 6 of that Act [45 U.S.C. 156]. As reported by the subcommittee this section provided that wages and salaries of rail employees could not be affected by the trustee, but that work rules could be rejected by the trustee. The reorganization court was given the authority to review the trustee's decisions and to settle any disputes arising from the rejection. This provision was withdrawn by the full committee, and hearings will be conducted next year by the Human Resources Committee in the area of rail labor contracts and the trustee's ability to reject them in a bankruptcy situation.

HOUSE REPORT NO. 95-595

Section 1167 is derived from present section 77(n) [section 205(n) of former title 11]. It provides that notwithstanding the general section governing the rejection of executory contracts (section 365), neither the court nor the trustee may change the wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act [45 U.S.C. 151 et seq.], except in accordance with section 6 of that Act [45 U.S.C. 156]. The subject of railway labor is too delicate and has too long a history for this code to upset established relationships. The balance has been struck over the years. This provision continues that balance unchanged.

REFERENCES IN TEXT

The Railway Labor Act, referred to in text, is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. Section 6 of the Act is classified to section 156 of Title 45. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

AMENDMENTS

1994—Pub. L. 103-394 struck out “(45 U.S.C. 151 et seq.)” after “Railway Labor Act” and “(45 U.S.C. 156)” after “such Act”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

§ 1168. Rolling stock equipment

(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that right to take possession and enforce those other rights and remedies shall be subject to section 362, if—

(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

(B) any default, other than a default of a kind described in section 365(b)(2), under such

security agreement, lease, or conditional sale contract—

(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;

(ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of—

(I) the date that is 30 days after the date of the default or event of the default; or

(II) the expiration of such 60-day period; and

(iii) that occurs on or after the expiration of such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract, if cure is permitted under that agreement, lease, or conditional sale contract.

(2) The equipment described in this paragraph—

(A) is rolling stock equipment or accessories used on rolling stock equipment, including superstructures or racks, that is subject to a security interest granted by, leased to, or conditionally sold to a debtor; and

(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, that is to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.

(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(2), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

(d) With respect to equipment first placed in service on or prior to October 22, 1994, for purposes of this section—

(1) the term “lease” includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

(2) the term “security interest” means a purchase-money equipment security interest.

(e) With respect to equipment first placed in service after October 22, 1994, for purposes of this section, the term “rolling stock equipment” includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2642; Pub. L. 98-353, title III, §519, July 10, 1984, 98 Stat. 388; Pub. L. 103-394, title II, §201(b), Oct. 22, 1994, 108 Stat. 4120; Pub. L. 106-181, title VII, §744(a), Apr. 5, 2000, 114 Stat. 175.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1168 of the House amendment incorporates a provision contained in section 1166 of the House bill instead of the provision contained in section 1175 of the Senate amendment for the reasons stated in connection with the discussion of section 1110 of the House amendment.

SENATE REPORT NO. 95-989

Section 1175 [enacted as section 1168] continues the protection accorded in present section 77(j) [section 205(j) of former title 11] to the rights of holders of purchase-money equipment security, and of lessors or conditional vendors of railroad rolling stock, but accords to the trustee a limited period within which to assume the debtor's obligation and to cure any defaults. The rights of such lenders are not affected by the automatic stay and related provisions of sections 362 and 363, or by any power of the court, unless (1) within 60 days after the commencement of the case (or such longer period as may be agreed to by the secured party, lessor or conditional vendor) the trustees, with the approval of the court, agrees to perform all of the debtor's obligations under the security agreement, lease or conditional sale contract, and (2) all defaults are cured within the 60-day period. Defaults described in section 365(b)(2)—defaults which are breaches of provisions relating to the insolvency or financial condition of the debtor, or the commencement of a case under this title, or the appointment of a trustee—are for obvious reasons, excepted.

HOUSE REPORT NO. 95-595

[Section 1166] This section [enacted as section 1168], derived with changes from the last sentence of present section 77(j) [section 205(j) of former title 11], protects the interests of rolling stock equipment financiers, while providing the trustee with some opportunity to cure defaults, agree to make payments, and retain and use the equipment. The provision is parallel to section 1110, concerning aircraft equipment and vessels.

AMENDMENTS

2000—Pub. L. 106-181 amended section catchline and text generally, substituting present provisions consisting of subssecs. (a) to (e) for former subssecs. (a) to (d) which contained somewhat similar provisions.

1994—Pub. L. 103-394 amended section generally. Prior to amendment, section read as follows:

“(a) The right of a secured party with a purchase-money equipment security interest in, or of a lessor or conditional vendor of, whether as trustee or otherwise, rolling stock equipment or accessories used on such equipment, including superstructures and racks, that are subject to a purchase-money equipment security interest granted by, leased to, or conditionally sold to, the debtor to take possession of such equipment in compliance with the provisions of a purchase-money equipment security agreement, lease, or conditional sale contract, as the case may be, is not affected by

section 362 or 363 of this title or by any power of the court to enjoin such taking of possession, unless—

“(1) before 60 days after the date of the commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract, as the case may be; and

“(2) any default, other than a default of a kind specified in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract, as the case may be—

“(A) that occurred before such date and is an event of default therewith is cured before the expiration of such 60-day period; and

“(B) that occurs or becomes an event of default after such date is cured before the later of—

“(i) 30 days after the date of such default or event of default; and

“(ii) the expiration of such 60-day period.

“(b) The trustee and the secured party, lessor, or conditional vendor, as the case may be, whose right to take possession is protected under subsection (a) of this section, may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1) of this section.”

1984—Subsec. (b). Pub. L. 98-353 inserted a comma after “approval”.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1169. Effect of rejection of lease of railroad line

(a) Except as provided in subsection (b) of this section, if a lease of a line of railroad under which the debtor is the lessee is rejected under section 365 of this title, and if the trustee, within such time as the court fixes, and with the court's approval, elects not to operate the leased line, the lessor under such lease, after such approval, shall operate the line.

(b) If operation of such line by such lessor is impracticable or contrary to the public interest, the court, on request of such lessor, and after notice and a hearing, shall order the trustee to continue operation of such line for the account of such lessor until abandonment is ordered under section 1170 of this title, or until such operation is otherwise lawfully terminated, whichever occurs first.

(c) During any such operation, such lessor is deemed a carrier subject to the provisions of subtitle IV of title 49 that are applicable to railroads.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2643; Pub. L. 97-449, §5(a)(3), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 98-353, title III, §520, July 10, 1984, 98 Stat. 388.)