

(3) If the number of employees who request to be separated pursuant to paragraph (2) of this subsection is greater, in engine service at any location, than the number of excess firemen at the location, and in train service at the location than the number of excess second and third brakemen, as determined by the Corporation, the Corporation shall separate the employees described in paragraph (2) of this subsection in order of seniority beginning with the most senior employee, until the excess firemen and second and third brakemen positions at that location, as determined by the Corporation, have been eliminated.

**(d) Designated separations**

If the number of employees who are separated pursuant to subsection (c)(3) of this section is less at any location than the number of excess firemen in freight and commuter service and second and third brakemen in freight service at such location, as determined by the Corporation, the Corporation may, after 210 days after August 13, 1981, designate for separation employees in engine service or train service respectively in inverse order of seniority, beginning with the most junior employee in active service at such location until the excess firemen in freight and commuter service and second and third brakemen in freight service, at that location have been eliminated. An employee designated under this subsection may choose (1) to furlough himself voluntarily, in which case the next most junior employee protected under the fireman manning or crew consist agreements or any other agreement or law, in the same craft or class at such location may be separated instead and receive the separation allowance, or (2) to exercise his seniority to another location, in which case the Corporation may separate, under the provisions of this subsection, the next most junior protected employee in active service at the location to which seniority ultimately is exercised.

**(e) Effect on positions**

(1) The Corporation shall refrain from filling one fireman position in freight service, or in commuter service where applicable, for each employee in engine service separated in accordance with this section.

(2) The Corporation may refrain from filling one brakeman position in excess of one conductor and one brakeman on one crew in freight service for each employee in train service who is separated in accordance with this section.

(3) Positions permitted to be not filled under this subsection shall be not filled in different types of freight service actually operated at or from the location in a sequence to be agreed upon between the Corporation and the general chairman representative of classes or crafts of employees having jurisdiction over the positions to be not filled. If no such agreement is reached, the Corporation may designate the position to be not filled.

(4) Notwithstanding paragraphs (1) and (2) of this subsection, the Corporation shall retain all rights it has under any provision of law or agreement to refrain from filling any position of employment.

**(f) Procedures**

The Corporation and representatives of the various classes and crafts of employees to be separated may agree on procedures to implement this section, but the absence of such agreement shall not interfere with implementation of the separations authorized by this section.

**(g) Commuter employees**

The provisions of this section shall apply to the separation of firemen in commuter service, except that with respect to such employees the Corporation is required to make the separations authorized by this section.

(Pub. L. 93-236, title VII, §702, as added Pub. L. 97-35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 662.)

**§ 797b. Preferential hiring**

**(a) General**

Any employee who is deprived of employment shall have the first right of hire by any other railroad for a vacancy for which he is qualified in a class or craft (or in the case of a non-agreement employee, for a non-agreement vacancy) in which such employee was employed by the Corporation or a predecessor carrier for not less than one year, except where such a vacancy is covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a railroad shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

**(b) Status**

The first right of hire afforded to employees under this section shall be coequal to the first right of hire afforded under sections 907 and 1004 of this title.

(Pub. L. 93-236, title VII, §703, as added Pub. L. 97-35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 663.)

**EXEMPTION OF NATIONAL RAILROAD PASSENGER CORPORATION IN HIRING QUALIFIED TRAIN AND ENGINE EMPLOYEES**

Pub. L. 99-272, title IV, §4011(c), Apr. 7, 1986, 100 Stat. 109, provided that: "The provisions of section 703 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797b), section 8 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 907), and section 105 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1004) shall not apply to the National Railroad Passenger Corporation in the hiring of qualified train and engine employees who hold seniority rights to work in intercity rail passenger service in connection with the assumption by such Corporation of functions previously performed under contract by other carriers."

**§ 797c. Central register of railroad employment**

**(a) Register**

(1) The Railroad Retirement Board (hereafter in this section referred to as the "Board") shall prepare and maintain a register of persons separated from railroad employment after at least one year of completed service with a railroad

who have declared their current availability for employment in the railroad industry. The register shall be subdivided by class and craft of prior employment and shall be updated periodically to reflect current availability.

(2) Each entry in the register shall include, or provide access to, basic information concerning the individual's experience and qualifications.

(3) The Board shall place at the top of the register those former railroad employees entitled to priority under applicable provisions of law, including this chapter.

**(b) Corporation employees**

As soon as is practicable after August 13, 1981, the Corporation shall provide to the Board the names of its former employees who elect to appear on the register and who have not been offered employment with acquiring railroads.

**(c) Vacancy notices; warning; civil penalty**

(1) Each railroad shall timely file with the Board a notice of vacancy with respect to any position for which the railroad intends to accept applications from persons other than current employees of that carrier.

(2)(A) As soon as the Board becomes aware of any failure on the part of a railroad to comply with paragraph (1), the Board shall issue a warning to such railroad of its potential liability under subparagraph (B).

(B) Any railroad failing to comply with paragraph (1) of this subsection after being warned by the Board under subparagraph (A) shall be liable for a civil penalty in the amount of \$500 for each subsequent vacancy with respect to which such railroad has so failed to comply.

**(d) Placement**

The Board shall, through distribution of copies of the central register (or portions thereof) to railroads and representatives of classes or crafts of employees and through publication of employment information derived from vacancy notices filed with the Board, promote the placement of former railroad employees possessing requisite skills and experience in appropriate positions with other railroads.

**(e) Employment applications**

In addition to its responsibilities under subsections (a) through (d) of this section, the Board shall facilitate the filing of employment applications with respect to current vacancies in the industry by former railroad employees entitled to priority under applicable provisions of law, including this chapter.

**(f) Expiration**

The provisions of this section shall cease to be effective on the expiration of the 6-year period beginning on August 13, 1981.

**(g) Resolution of disputes**

Any dispute, grievance, or claim arising under this section, section 797b of this title, section 907 of this title, or section 1004 of this title shall be subject to resolution in accordance with the following procedures:

(1) Any employee with such a dispute, grievance, or claim may petition the Board to review and investigate the dispute, grievance, or claim.

(2) The Board shall investigate the dispute, grievance, or claim, and if it concludes that the employee's rights under this section, section 797b of this title, section 907 of this title, or section 1004 of this title may have been violated, the dispute, grievance, or claim shall be subject to resolution in accordance with the procedures set forth in section 153 of this title.

(3) In the case of any violation of this section, section 797b of this title, section 907 of this title, or section 1004 of this title, the Adjustment Board (or any division or delegate thereof) or any other board of adjustment created under section 153 of this title shall, where appropriate, award such relief, including back pay, as may be necessary to enforce the employee's rights.

(Pub. L. 93-236, title VII, § 704, as added Pub. L. 97-35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 663; amended Pub. L. 97-468, title II, § 235, Jan. 14, 1983, 96 Stat. 2547; Pub. L. 99-272, title IV, § 4011(a), (b), Apr. 7, 1986, 100 Stat. 108, 109.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-272, § 4011(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 99-272, § 4011(b), substituted "6-year" for "4-year".

1983—Subsec. (f). Pub. L. 97-468, § 235(a), substituted "4-year" for "3-year".

Subsec. (g). Pub. L. 97-468, § 235(b), substituted "this section, section 797b of this title, section 907 of this title, or section 1004 of this title" for "this section or section 797b of this title" wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-272, title IV, § 4011(d), Apr. 7, 1986, 100 Stat. 109, provided that: "The amendments made by subsections (a) and (c) [amending this section and enacting provisions set out as a note under section 797b of this title] shall take effect on the date of enactment of this Act [Apr. 7, 1986], and the amendment made by subsection (b) [amending this section] shall be effective as of August 1, 1985."

**§ 797d. Election and treatment of benefits**

**(a) Election**

(1) Any employee who accepts any benefits under an agreement entered into under section 797<sup>1</sup> of this title or a termination allowance under section 797a of this title, shall, except as provided in paragraph (2) of this subsection, be deemed to waive any employee protection benefits otherwise available under any other provision of law or any contract or agreement in effect on August 13, 1981, except benefits under sections 797b and 797c of this title, and shall be deemed to waive any cause of action for any alleged loss of benefits resulting from the provisions of or the amendments made by the Northeast Rail Service Act of 1981.

(2) Nothing in paragraph (1) of this subsection shall affect the right of any employee described in such paragraph to benefits under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

**(b) Treatment of benefits**

Any benefits received by an employee under an agreement entered into pursuant to section

<sup>1</sup> See References in Text note below.