

(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) 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