

SUBCHAPTER VII—PROTECTION OF
EMPLOYEES

**§ 797. Repealed. Pub. L. 99-509, title IV, § 4024(c),
Oct. 21, 1986, 100 Stat. 1904**

Section, Pub. L. 93-236, title VII, § 701, as added Pub. L. 97-35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 661; Pub. L. 99-509, title IV, § 4024(a), (b), Oct. 21, 1986, 100 Stat. 1903, related to employee protection agreement.

REPEAL OF SECTION; CONTINUING RESPONSIBILITIES OF
CONSOLIDATED RAIL CORPORATION AFTER SALE DATE

Pub. L. 99-509, title IV, § 4024(c)-(f), Oct. 21, 1986, 100 Stat. 1904, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(c) REPEAL OF SECTION 701.—Section 701 of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] is repealed effective on the sale date [Apr. 2, 1987, see 45 U.S.C. 702(17A)]. Notwithstanding this repeal—

“(1) any dispute or controversy regarding benefits under section 701 shall be determined under the terms of the law in effect prior to such repeal; and

“(2) the Railroad Retirement Board shall take such actions as may be necessary to complete administration and closeout of the section 701 program and the Board is authorized to receive and apply Corporation funds for this purpose.

“(d) CONTINUING RESPONSIBILITIES.—(1) On and after the sale date, the Corporation shall provide the protection for its employees described in ‘Part III, Article III, Employee Protection’, of the ‘Definitive Agreement of September 17, 1985, By and Between Conrail and the Undersigned Representatives of Conrail’s Agreement Employees’ and Appendix 3 thereto, together with any amendments thereto, or under any other terms and conditions as shall be agreed between the Corporation and the representatives of its employees.

“(2) The Corporation shall pay, as designated by the Railroad Retirement Board, any remaining benefits under section 701 of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] that accrued, but were not disbursed, prior to the sale date.

“(3) The Railroad Retirement Board shall transfer to the Corporation such information regarding administration of the labor protection program under such section 701 as may be reasonably necessary for the Corporation to discharge its responsibilities under this subsection, including copies of the individual claim records of employees of the Corporation.

“(4) The United States shall have no liability for benefits under this subsection.

“(e) COMPENSATION FOR WAGES BELOW INDUSTRY STANDARD.—The Corporation shall pay \$200,000,000 to present and former employees subject to collective bargaining agreements, in accordance with the terms and conditions in the Definitive Agreement referred to in subsection (d)(1), or as otherwise agreed between the parties.

“(f) ESOP TRANSACTIONS.—(1) As soon as practicable after the date of the enactment of this Act [Oct. 21, 1986], the employee stock ownership plan of the Corporation (hereafter in this subsection referred to as the ‘ESOP’) shall be amended to provide that—

“(A) the shares of the ConRail Equity Corporation preferred stock held by the ESOP shall be surrendered by the ESOP in exchange for an equal number of shares of the common stock of the Corporation, and such common stock of the Corporation shall be allocated by the ESOP to the same persons in the same amounts as the shares of ConRail Equity Corporation preferred stock had been allocated; and

“(B) the remaining shares of the ConRail Equity Corporation preferred stock held by the Corporation shall be cancelled, and an equal number of shares of the common stock of the Corporation shall be contributed by the Corporation to the ESOP, which shares shall be allocated by the ESOP to persons who are or were ESOP participants in accordance with the

formula set forth in section 2 of Article II of Part III of the Definitive Agreement referred to in subsection (d)(1), and in accordance with a comparable formula for present and former employees of the Corporation not covered by such section of the Definitive Agreement, except that no contribution by the Corporation to the ESOP shall be made which would affect the tax-qualified status of the ESOP, or of any of the employee benefit plans maintained by the Corporation or any affiliate of the Corporation, under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

“(2)(A)(i) As soon as practicable after the expiration of 180 days after 100 percent of the United States shares are sold, the ESOP shall distribute all of the stock in the accounts of its participants and beneficiaries, except as provided in clause (ii).

“(ii) Fractional shares shall not be distributed under clause (i). Shares equal to the aggregate amount of fractional shares shall be surrendered by the ESOP and redeemed by the Corporation for cash at the average closing price for the common stock of the Corporation on a national securities exchange for the 10 business days immediately preceding the date of distribution under clause (i), or, if the common stock of the Corporation is not listed on a national securities exchange, at the average closing price for such stock for such 10 business days as appearing in any regularly published reporting or quotation service, and the proceeds of such redemption shall be distributed by the ESOP to the same participants and beneficiaries and in the same amounts as the fractional shares had been allocated.

“(B) After completing the distribution under subparagraph (A), the ESOP shall terminate.

“(3) The Corporation shall distribute any full shares of its common stock which, because of the exception under paragraph (1)(B), could not be contributed to the ESOP to those persons to whom the ESOP would have allocated such shares pursuant to paragraph (1)(B) had such shares been contributed to the ESOP. The Corporation shall pay cash pursuant to the formula set forth in paragraph (2)(A)(ii) in lieu of fractional shares.

“(4) For purposes of Rule 144 promulgated under the Securities Act of 1933 [15 U.S.C. 77a et seq.], each share of the common stock of the Corporation distributed under this subsection shall be deemed to have been beneficially owned by the recipient, as of the date of such distribution, for a period of 3 years.”

§ 797a. Termination allowance

(a) General

The Corporation may terminate the employment of certain employees, in accordance with this section, upon the payment of an allowance of \$350 for each month of active service with the Corporation or with a railroad in reorganization, but in no event may any such termination allowance exceed \$25,000.

(b) Employment needs

Within 90 days after August 13, 1981, the Corporation shall determine, for each location, the number of employees that the Corporation intends to separate under subsection (a) of this section.

(c) Notification and separation procedure

(1) Within 90 days after August 13, 1981, the Corporation shall notify its employees of their rights and responsibilities under this section.

(2) Within 90 days after August 13, 1981, the Corporation shall notify each train and engine service employee eligible to be separated under paragraph (3) that such employee may be entitled to receive a separation payment under this section if such employee files a written request to be separated. Such notice may be revised from time to time.

(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