

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.

797<sup>1</sup> of this title and any termination allowance received under section 797a of this title shall be considered compensation solely for purposes of—

- (1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and
- (2) determining the compensation received by such employee in any base year under the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

(Pub. L. 93-236, title VII, §705, as added Pub. L. 97-35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 664.)

#### REFERENCES IN TEXT

Section 797 of this title, referred to in subsecs. (a)(1) and (b), was repealed by Pub. L. 99-509, title IV, §4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

The Northeast Rail Service Act of 1981, referred to in subsec. (a)(1), is subtitle E (§§1131-1169) of title XI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 643, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Railroad Retirement Act of 1974, referred to in subsecs. (a)(2) and (b)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Railroad Unemployment Insurance Act, referred to in subsecs. (a)(2) and (b)(2), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

#### § 797e. Assignment of work

##### (a) General

With respect to any craft or class of employees not covered by a collective bargaining agreement that provides for a process substantially equivalent to that provided for in this section, the Corporation shall have the right to assign, allocate, reassign, reallocate, and consolidate work formerly performed on the rail properties acquired pursuant to the provisions of this chapter from a railroad in reorganization to any location, facility, or position on its system if it does not remove such work from coverage of a collective bargaining agreement and does not infringe upon the existing classification of work rights of any craft or class of employees at the location or facility to which such work is assigned, allocated, reassigned, reallocated, or consolidated. Prior to the exercise of authority under this subsection, the Corporation shall negotiate an agreement with the representatives of the employees involved permitting such employees the right to follow their work.

##### (b) Expiration

The authority granted by this section shall apply only for as long as benefits are provided under this subchapter with funds made available under section 797<sup>1</sup> of this title.

(Pub. L. 93-236, title VII, §706, as added Pub. L. 97-35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 665.)

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

#### REFERENCES IN TEXT

Section 797 of this title, referred to in subsec. (b), was repealed by Pub. L. 99-509, title IV, §4033(a)(2), Oct. 21, 1986, 100 Stat. 1908, and a new section 797 of this title was subsequently added by Pub. L. 104-88, §327(5).

#### § 797f. Contracting out

All work in connection with the operation or services provided by the Corporation on the rail lines, properties, equipment, or facilities acquired pursuant to the provisions of this chapter and the maintenance, repair, rehabilitation, or modernization of such lines, properties, equipment, or facilities which has been performed by practice or agreement in accordance with provisions of the existing contracts in effect with the representatives of the employees of the classes or crafts involved shall continue to be performed by the Corporation's employees, including employees on furlough. Should the Corporation lack a sufficient number of employees, including employees on furlough, and be unable to hire additional employees, to perform the work required, it shall be permitted to subcontract that part of such work which cannot be performed by its employees, including those on furlough, except where agreement by the representatives of the employees of the classes or crafts involved is required by applicable collective-bargaining agreements. The term "unable to hire additional employees" as used in this section contemplates establishment and maintenance by the Corporation of an apprenticeship, training, or recruitment program to provide an adequate number of skilled employees to perform the work.

(Pub. L. 93-236, title VII, §707, as added Pub. L. 97-35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 665.)

#### § 797g. New collective-bargaining agreements

##### (a) Agreement

Not later than 60 days after the effective date of any conveyance pursuant to the provisions of this chapter, the representatives of the various classes or crafts of employees of a railroad in reorganization involved in a conveyance and representatives of the Corporation shall commence negotiation of a new single collective bargaining agreement for each class and craft of employees covering the rate of pay, rules, and working conditions of employees who are the employees of the Corporation. Such collective bargaining agreement shall include appropriate provisions concerning rates of pay, rules, and working conditions, but shall not, before April 1, 1984, include any provisions for job stabilization which may exceed or conflict with those established herein. Negotiations with respect to such single collective bargaining agreement, and any successor thereto, shall be conducted systemwide.

##### (b) Procedure

(1) Any procedure for finally determining the components of the first single collective bargaining agreement for any class or craft, agreed upon before August 13, 1981, shall be completed no later than 45 days after August 13, 1981. Such agreed upon procedure shall be deemed to satisfy the requirements of sections 157 and 158 of this title. The National Mediation Board shall