

ment 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.)

Statutory Notes and Related Subsidiaries

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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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 797¹ 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 797¹ 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.)

Editorial Notes

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,

¹ See References in Text note below.

§ 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. 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, 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 797l¹ 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.)

Editorial Notes

REFERENCES IN TEXT

Section 797l 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 797l 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, equip-

¹ See References in Text note below.