

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20078
Docket Number MS-20246

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: (Vaughn E. Smith
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: I have been with **the Missouri Pacific** Railroad for **approximately 26** years. I, as most employees did, started out as Class C seniority and worked up to Class A. Other employees chose not to do so rather than to work out in the yards in all kinds of inclement weather - rain, snow, heat, etc. They preferred the better working conditions under a roof.

Now everyone has been arbitrarily consolidated into Class A with no consideration given to those of us who accepted the working conditions that **went** along with Class A. **This** results in many gaining seniority over those of us who worked up to Class A.

OPINION OF BOARD: Claimant entered Carrier's service, and established a seniority date, on October 9, 1946. He was employed as a freight house laborer and was carried on the Class C seniority roster. Claimant was later promoted to a clerical position and established a seniority date of February 8, 1947 on the Class A-B seniority roster. Effective March 1, 1973, following a negotiation, Carrier and the Organization entered into an agreement which effected the consolidation of Groups A, B and C seniority rosters. Following **this** change Claimant, although retaining his oldest seniority date of October 9, 1946, was passed on the consolidated roster and instead of maintaining the 79th position was moved to 100 on this new list. He considers the consolidation to be discriminatory, and by inference requests its rescission.

The record herein indicates that the claim was not **processed** on the property in accordance with Rule 43 of the Agreement. No grievance was filed on the property and the entire matter was initiated by the **submission** to this Board. Rule 43 provides for the submission of all claims to the officer of the Carrier authorized to receive them and a step by step procedure thereafter; **this** process was not followed by Claimant. The Railway Labor Act, as amended, provides in Section 3, First **(i)** that **as** a condition precedent for Board consideration disputes must be handled on the **property"...in** the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes." For this reason we have no alternative but to dismiss this claim. In passing, it must be noted that the claim could not have been considered on its merits even in the absence of the fatal procedural defect; the claim does not allege any rule violation but rather that a new rule is inequitable and discriminatory. It is well settled that this Board has no authority to change rules ; that **perogative** belongs to Carrier and the Organization through negotiation.

FINDINGS: The Third Division of ~~the~~ Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim was not progressed in accordance with the Rules.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1973.