

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20076
Docket Number MS-20240

Irwin M. **Lieberman**, Referee

(Louis P. Schorgl
PARTIES TO DISPUTE: (**Missoui** Pacific Railroad Company

STATEMENT OF CLAIM: On March 1st 1973 our **seniority rosters** of Class 1 - 2 - 3 were consolidated with the oldest date prevailing. Prior to March 1st our rosters of seniority were in 3 classes -- Class 1 consisted of clerks machine operators and other skilled work. Class 2 were messenger boys, call boys etc. Class 3 were the laborers, janitors, freight handlers and such.

Class 2 and 3 seniority dates were established by the men on their 1st day of compensated service, while Class 1 seniority dates were not established until the men in Class 1 were assigned to a regular job. In other words an employee in class 1 could work off the extra board for several months before establishing a seniority date in class 1.

In my case my first compensated day was July 23 1946, and each day after that I worked different Class 1 positions off the **extra** board until Oct. 7th 1946 on which date I was assigned to a regular position thus establishing a seniority date as of **Oct** 7 1946, while the men who hired out in Class 3 were allowed their seniority dates on their 1st day of compensated service--which means several men who were hired in Class 3 during August and September of 1946 will run around me on the new seniority roster as of March 1 1973.

I am making a complaint on the grounds that this action is discriminatory against employees hired on the Class 1 roster. I would like adjustment made so that my seniority will date from the first day of compensated service, July 23rd 1946, I believe this is only fair since seniority for all other classes is figured in this manner. As now set up men who actually hired out on the railroad after I did will be ahead of me on the March 1st 1973 seniority roster.

I have discussed this with both the Company and the union officials, and while they are in sympathy with me, they say they can do nothing about it.

Please handle accordingly.

OPINION OF BOARD: Claimant was employed as a Class 1 Yard Clerk on July 23, 1946 and established a seniority date of October 7, 1946 when he received a regular assignment - all in accordance with Rule 3 of the Agreement. By **agreement** reached with the Organization effective March 1, 1973, on a system wide basis, Groups 1, 2 and 3 rosters were consolidated. As a result of this consolidation, Claimant was passed by certain employees on the seniority roster, and the claim is based on his allegation that this action was both unfair and discriminatory. He asks that his seniority date be adjusted to his first day of compensated service, July 23, 1946.

The record indicates that this claim was not processed on the property in accordance with the procedures outlined in Rule 43 of the **Agreement**. That rule provides, *inter alia*, that all claims must be presented to the officer of the Carrier authorized to receive them within sixty days of the event complained of and then must be progressed on the property in specific steps. The record reveals that this claim was not presented to any Carrier officer or progressed as provided by the rule. Further the Railway Labor Act, as amended, provides in Section 3, First (i) that as a condition for consideration by the Board, 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. It should be noted, however, that even if there were no fundamental procedural defect, the issue in this claim involves a complaint of unfairness of a newly negotiated rule rather than an allegation of a violation of a rule and as such could not be considered. The Board cannot change rules • that **perogative** belongs to the parties in collective bargaining.

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.

AWARD

Claim dismissed.

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

ATTEST:

AW Paulos

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