(Advance copy. The usual printed copies will be sent later.)

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6480
SECOND DIVISION Docket No. 6332
2-SCL-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That at Florence, South Carolina, the shifts with lunch period of thirty (30) minutes which ends at 3:30 P.M. and 12:00 Midnight, are not authorized by the current agreement.

2. That accordingly, the Carrier be ordered to restore all shifts on the eight (8) consecutive hour basis including allowance of 20 minutes for lunch, which existed prior to March 29, 1971.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This record contains a number of unclarified questions of fact. To the extent possible, we have adduced the following to be the facts: Prior to March 29, 1971, employees assigned to work at the Carrier's Florence, South Carolina Repair Track were on a two-shift operation established in May 1967 with starting times, First Shift 7:00 A.M. and Second Shift 3:00 P.M. and quitting times 3:00 P.M. and 11:00 P.M. respectively. A twenty minute paid lunch period was provided the employes involved. On March 29, 1971, Carrier changed the shift hours as follows: First Shift 7:00 A.M. to 3:30 P.M., and Second Shift 3:30 P.M. to 12 Midnight. A one-half hour unpaid lunch period approximately midpoint in each shift was provided.

Petitioner claims the change was violative of Rule 2 of the Controlling Agreement between the parties. Carrier avers that its action was consistent with its rights under Rule 2(a) and 2(b) of the agreement.

Carrier relies on the fact that the pre-March 29, 1971 schedule was instituted by it in 1967, and without the employes or their organization entering into a mutual agreement with reference thereto, to support its right to make changes in the shift times. It contests the invoking of Rule 2(c) by the Petitioner as not applicable because the particular operation is worked on two, not three shifts. Rule 2(b), according to the Carrier, affords it the right to set up the shift hours and requires only mutual agreement to the time and length of the lunch period. The Organization refused to participate in a discussion of this factor and the Carrier therefore proceeded to establish the lunch period consistent with the underlying concept of the Rule relative thereto.

Essentially the question is whether the Carrier may, unilaterally, make a material change in conditions of employment which it had established approximately four years prior. That those conditions were not the result of a mutual agreement does not appear to afford to Carrier the right to make revisions at will. It is fundamental that "silence gives consent" and the failure of the employes to protest the 1967 change can be construed as their agreement thereto. By its own action, Carrier instituted the standards for a three shift operation for the operation involved and this became the established accepted practice.

Implicit in Rule 2 is the requirement that changes in shift hours, lunch periods, and related matters would be by mutual agreement. It is basic that the Organization may not arbitrarily, capriciously, or unreasonably withhold its agreement to a change. Carrier asserts that the change was made to meet its operational needs. However, it presents nothing in the form of probative evidence to support this allegation and we have consistently held that "saying so does not make it so". We are in no position, based upon this record, to hold that the Organization's refusal to agree to the changes introduced by the Carrier was arbitrary, capricious or unreasonable. It is quite evident that the cited Rules seek to limit changes in work schedules of employes. If Carrier's view were sustained, it could unilaterally revise hours of work at will at any time and as many times as it is wished with or without reasons. This is not consonant with the spirit of the Rules.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1973.