Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10964
SECOND DIVISION Docket No. 10809
2-A&S-CM-'86

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(The Alton and Southern Railway Company

Dispute: Claim of Employes:

1. That at East St. Louis, Illinois, the shifts with lunch period of thirty (30) minutes which ends at 4:30 P.M., 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 November 21, 1983.

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 employes 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.

On November 10, 1983, the Carrier abolished all Rip Track jobs effective November 21, 1983. That same day, the abolished jobs were put up for bid with hours of 8:00 A.M. to 4:30 P.M., and an unpaid lunch from 12:30 P.M. to 1:00 P.M. The hours for the abolished jobs were 7:00 A.M. to 3:00 P.M. with a paid twenty minute lunch. Prior to making this unilateral change, the Carrier's Mechanical Supervisor, K. E. Kelley, discussed the proposed changes on March 22, 1983. According to Kelley, he was told he would have to serve a Section 6 Notice because he was changing the Agreement. On September 29, 1983, the General Chairman met with the Carrier's Labor Relations Department and discussed the proposed lunch period. No Agreement was forthcoming. Apparently, Carmen are assigned to work the repair track only on the first shift.

It is undisputed the 7:00 A.M. to 3:00 P.M. shift for the Rip Track has been in effect for over thirty years. Citing Rule 2, which covers a one shift situation, the Organization points out the changes were made in the absence of any Agreement.

In support of its position, the Organization refers to Second Division Award 6480 which dealt with a similar dispute. The sustaining Award said:

> "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."

Rule 2 reads as follows:

> "When one shift is employed, the starting time shall not be earlier than 7:00 A.M. nor later than 8:00 A.M. The time and length of the lunch period shall be subject to mutual agreement with the committee."

The Organization contends the standards for a three shift operation had been in effect for many years covering all crafts. It asserts that suddenly the Carrier singled out one craft and changed the assigned hours to include a thirty minute unpaid lunch period without reaching an Agreement with the Committee.

The language covering multiple shifts is covered by Rule 3. It is clear and unambiguous language which provides for a shift of consecutive hours and a twenty minute (free) lunch allowance. Likewise, Rule 2 is equally clear and unambiguous. No Agreement is necessary to change the starting times to conform with the provision that the starting time shall not be earlier than 7:00 A.M. or later than 8:00 A.M. Mutual Agreement is limited to "the time and length of the lunch period." This latter condition was not met. Past practice has no role in the face of clear and unambiguous language.

The Organization cited Award 6480, supra. We note that Award indicated an Organization may not arbitrarily, capriciously or unreasonably withhold its Agreement to change. Herein, it is undisputed the Carrier's operation has shrunk to one shift. Having done so, it is not bound by any Agreement provision to continue scheduling under Rule 3. Rule 2 specifically governs one shift operations. The failure of the Organization to mutually agree to the time and length of the lunch period from March 22, 1983, to November 9, 1983, is, under the record herein, nothing short of arbitrary. Rule 2 clearly provides for the change in hours. Failure to achieve mutual Agreement over the timing and length of the lunch period cannot be converted into a power of veto. See Second Division Award 6691. Based upon this analysis, we will deny this Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of August 1986.