# Award Number 17369
# Docket Number CL-17872

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

Louis Yagoda, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**KANSAS CITY TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6479) that:

1. The Carrier violated the Agreement between the parties on June 1, 1967 when it refused to permit Claimant, H. L. Baker to exercise displacement rights to a position as Machine Diepatcher, and afford him the training and assignment thereto as provided under Memorandum Agreement of June 22, 1962.

2. The Carrier shall now be required to compensate Baker beginning with June 1, 1967, for the difference between the rate of pay of a Machine Dispatcher and that of the positions held subsequent thereto until such time as Baker is afforded the opportunity for training and assignment.

EMPLOYES' STATEMENT OF FACTS: H. L. Baker having a seniority date of October 8, 1936 held a position as General Foreman in the Mail and Baggage Department until he was relieved of same effective June 1, 1967.

Upon being relieved of his assignment effective June 1, 1967, Baker attempted under Rule 13 of the existing Agreement to displace on a position as a Machine Dispatcher as provided under Section IV of Memorandum Agreement dated June 22, 1962. Copy attached hereto as Employes' Exhibit No. 1. He was denied the right to displace and receive the training to which the Employes contend he was entitled. (See Employes' Exhibit No. 2).

Claim was filed by Local Chairman, Mr. L. R. Gant, with General Mail and Baggage Agent, Mr. D. R. Patterson on July 21, 1967. (Employes' Exhibit No. 3).

Conference was held between Local Chairman L. R. Gant and General Mail and Baggage Agent, D. R. Patterson, on August 17, 1967, with Mr. Patterson in letter dated August 18, 1967, denying the claim and setting out his reasons therefor. (Employes' Exhibit No. 4).

Appeal was duly filed by the General Chairman with the Manager of Personnel Mr. U. B. Llewellyn in letter dated September 19, 1967, (Employes' Exhibit No. 5).

In letter dated November 14, 1967, the Manager of Personnel, highest officer of the Carrier to whom appeals can be taken denied the claim. (Employes' Exhibit No. 6).

On November 14, 1967, subsequent to the final decision of the Carrier, the case was discussed in conference with the final conference thereon held April 18, 1968.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: Effective June 1, 1967, Claimant H. L. Baker, was disqualified and relieved from excepted position of General Foreman. He requested displacement on a Coder position but this was denied as Claimant had never attended coder training classes and was not qualified to perform that work.

Mr. Baker then displaced on and was assigned to an Assistant Foreman position, for which he was qualified.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant held the position of General Foreman, Mail and Baggage Department, until he was released from said position effective June 1, 1967. He thereupon requested to be placed on a position of Machine Operator (also referred to by the parties as "Coder") in displacement of a junior incumbent in that position in Carrier's automated mail sortation system in Kansas City Union Station.

By letter dated June 1, 1967, Carrier responded to this request as follows:

> "Confirming our conversation this morning regarding your desire to be placed on coder's position.
>
> Inasmuch as you do not qualify as a coder although your seniority would have entitled you to attend coding school the last time, we cannot hold a special session on an individual basis; however, we will consider training you as a coder at the next session."

Accordingly, Claimant displaced on and was assigned to an Assistant Foreman position and filed the claim which is now before us, the parties having failed to reach agreement thereon, through the various stages of the Agreement procedure.

In connection with the installation of the automated mail sortation system, the parties had entered into a Memorandum of Agreement on June 22, 1962. Said Memorandum provides for a preliminary training program followed by periodic training courses to prepare employees in the skills needed for the positions of Machine Operator and Conveyor Operator to be used in the new process. It further stipulates the means by which trainees will be enrolled, the hours of the courses and the way in which employees who qualify themselves by training will be given access to the available jobs and also how those shall be treated who disqualify themselves during the training period.

In support of this claim, Employes cite Rule 13 of the existing Agreement in respect to displacement rights of senior employes as well as Section IV of the Memorandum of Agreement of June 22, 1962. Carrier does not dispute applicability of Rule 13 to Claimant. The parties are in disagreement however, in respect to the interpretation and application to this situation of Section IV of the Memorandum of Agreement (Training Agreement). Section IV reads:

> "After training and assignment of employees subsequent to the initial operations described in Attachment 'A' training for positions of Machine Dispatcher and Conveyor Operator will be conducted periodically by the Carrier and the number of employees required will be accepted from those making application in the order of their seniority and they will be trained during assigned working hours without loss of compensation. Only employees who have satisfactorily completed the prescribed training will be permitted to bid on Machine Operator and Conveyor Operator positions. However, employees exercising displacement rights not previously trained or qualified shall be entitled to training and assignment in accordance with the terms of this agreement at the time affected."

Employes contend that by the terms of Section IV, the Claimant was entitled to placement on the Coder position at the time he became available and applied for the job as well as on-the-job training while occupying said position.

In the light of the language of the Memorandum as a whole, Carrier interprets the last sentence of Section IV as meaning that employes are to be permitted to displace others on Coder positions if they can qualify at the time said employes are affected. That is, the phrase, "at the time affected", refers to the "terms of this agreement" and not to "shall be entitled to training and assignment" as Claimant contends.

The determination of this controversy is dispositively dependent on the mutual intent to be found in the last sentence of Section IV of the Training Agreement.

We find the critical sentence not to be an ideal expression of the meaning which either party attributes to it. Nevertheless, on the basis of common usage of language and sentence structure and within the over-all contractual and situational context, the intention to be found in this sentence is more in keeping with Claimant's interpretation.

As Employes point out, the use of the conjunction "However" as the first word of the sentence must connote an intent to establish in what follows a differentiation or exception from that which preceded. This is all the more clear from the emphasis given to the preceding sentence by the word "only". That sentence states:

> "Only employees who have satisfactorily completed the prescribed training will be permitted to bid on Machine Operator and Conveyor Operator positions."

The sentence which follows (that is, the one having controlling effect on the instant controversy), clearly intends an exception from the "only" delimitation. It turns to another class of employees—those "exercising dis-

placement rights [and who] are not previously trained or qualified" and stipulates a condition for them different from that imposed on those who are bidders. The latter are required to have satisfactorily completed the prescribed training in order to be eligible for assignment. As for the "displacers", the reasonable logic of language as commonly used compels the finding of an intention that these are to be treated differently. They are obviously not intended to have been trained as a condition of exercising displacement rights. Read in this light, the sentence can only yield the meaning that said employes, unlike the others, are to be entitled to training and assignment even though they had not previously completed said training.

It would fly completely in the face of the contiguousness of these sentences and the logic they set up together, if we were to interpret the last of them as meaning, as Carrier urges, "however, employes exercising displacement rights and not previously trained or qualified shall also not be permitted on the jobs in question until they have satisfactorily completed the prescribed training". Surely, simpler and more direct ways of saying this would have immediately come to the minds of the drafters. To intend that meaning in the words used, would be an exercise in redundancy and futility and a waste of words, contrary to the well-settled canon of contract construction and interpretation that words shall be deemed to have been used for a purpose.

By far, the meaning more intelligibly related to both the agreement and situational context is that these employes, unlike the bidders, shall have the right to simultaneous placement and training at the time they are "affected" by reduction and by displacement claim.

Taking cognizance of Carrier's reasoning, what value shall we give to the phrase "in accordance with the terms of this agreement" which is interposed between the other two phrases? We think, no more and no less than an intent that this class of employes shall have applied to them the conditions of training described in earlier sections of the Agreement: at the company's expense, without loss of compensation to the employes involved, the extent of training necessary, the steps to be taken if an employe does not make satisfactory progress during the training period.

The alternative interpretation urged by Carrier does not make sense, that is, that this one condition was signaled out for notice that it will change according to changes made in future agreements. This applies to all conditions and does not need saying. It makes just as little sense to interpret the sentence as a self-cancelling device for the purpose of including it in the preceding sentence (that is, as a reference to the "agreement terms" in that sentence).

Carrier is entirely correct on syntactical grounds, when it argues that the meaning given the sentence by Employes does not conform to punctuation standards. To do so, a comma would be needed after the word "agreement". It is our opinion, however, that the logical thrust of the critical sentence when read within the entire agreement and situational context in which it exists, prevails over this weakness in punctuation. We conclude that the ommission was an error by the drafters which does not vitiate the intent revealed on more compelling grounds.

We shall therefore sustain the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1969.

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