

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Edward F. Carter, Referee

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**MAINE CENTRAL RAILROAD COMPANY**

**PORTLAND TERMINAL COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) That under the application of letter addressed to M. T. Simmons, General Chairman, Brotherhood of Maintenance of Way Employes, by S. G. Phillips, Engineer Maintenance of Way, under date of February 16, 1944, bridge and building foreman and equipment inspectors are entitled to six days sick leave with pay in any one year;

(2) That Bridge and Building Foreman E. B. Sweet, who was off duty on account of sickness from February 26 to March 14, 1945, shall be paid for; six days sick leave.

(3) That Bridge and Building Foreman Anson B. Stewart, who was off duty on account of sickness from January 25 to February 1, 1946, shall be paid for six days sick leave.

**EMPLOYES' STATEMENT OF FACTS:** Memorandum of Agreement under dates of February 16, 1944 and February 13, 1945, and letter under date of February 16, 1944, pertaining to bridge and building foremen and other classes of employes, read:

MEMORANDUM OF AGREEMENT  
BETWEEN  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
AND  
MAINE CENTRAL RAILROAD COMPANY  
PORTLAND TERMINAL COMPANY

---

EFFECTIVE FEBRUARY 16, 1944

\* \* \* \* \*

Effective this date, Bridge and Building Foremen and Work Equipment Inspector, Maintenance of Way Department, are included within the scope of the Agreement with the Brotherhood of Maintenance of Way Employes effective May 28, 1942, and the provisions of that Agreement, except as hereinafter provided, apply.

Brotherhood representatives would, of a certainty, not agree to the language contained therein.

In further proof of the Position of the Carrier that the Agreement of February 16, 1944, was entirely superseded or set aside, the attention of your Board is directed to the following:

1. The Agreement of February 16, 1944 covered four specific stipulations, i.e.:
  - (a) Inclusion of Bridge and Building Foremen and Work Equipment Inspector in Scope of Maintenance of Way Agreement effective May 28, 1942.
  - (b) Monthly salary to cover all services performed including overtime worked and work performed on Sundays and Holidays.
  - (c) No deduction in monthly rate to be made because of curtailment in number of days and hours worked.
  - (d) When called, held for or required to perform work other than their own duties outside of established working hours on week days, on Sundays and Holidays, they would be paid at overtime rates specified in the Agreement.
2. The Agreement of February 13, 1945, was entered into to provide overtime rates to these Foremen and Inspector when required to perform any work on Sundays and Holidays and in excess of their regular eight hour work period on week days. If it was the intent that the Agreement of February 16, 1944, or any portion thereof, was to remain in effect, the revision of overtime payment would be the only stipulation changed in the February 13, 1945 Agreement. Such however, was not the intent, and a comparison of the two Agreements, as quoted in the Carrier's Statement of Facts, will quickly show that the stipulations in the 1944 Agreement, which remained unchanged in the 1945 Agreement, were included in the 1945 Agreement WITH THE EXCEPTION OF THE LETTER AGREEMENT COVERING SICK LEAVE BENEFITS, WHICH WAS NOT INTENDED TO BE INCLUDED.

The Parties to this dispute have exchanged copy of their Rebuttal to the other's Position.

**OPINION OF BOARD:** On February 16, 1944, a Memorandum of Agreement was entered into whereby Bridge and Building Foremen and Work Equipment Inspectors, Maintenance of Way Department, were included within the scope of the Agreement between the Maintenance of Way Employees and this Carrier. On the same day, Carrier's representative wrote the Organization's representative in part as follows:

"In completion of the Memorandum of Agreement between your Brotherhood and these Companies, effective February 16, 1944, which provides that Bridge and Building Foremen and Work Equipment Inspector, Maintenance of Way Department, are included within the scope of the Agreement with the Brotherhood of Maintenance of Way Employees, effective May 26, 1942, the following is agreed:

"Present sick leave benefits applicable to these Foremen and the Equipment Inspector, which are six (6) days in any one year, to be continued until and unless modified by subsequent agreement."

On February 13, 1945, a second Memorandum of Agreement was entered into under date of February 13, 1945. This latter Agreement dealt

with and provided for the payment of overtime for Bridge and Building Foremen and Work Equipment Inspectors. It followed the identical language of the Memorandum of Agreement dated February 16, 1944, except where changes were necessary to provide for overtime pay. We think the readoption in terms of that part of the prior Memorandum of Agreement of February 16, 1944, other than that pertaining to overtime pay, in the Agreement of February 18, 1945, carries into it the agreed upon interpretation of the former. The use of the words, "This Agreement supersedes agreement effective February 16, 1944," evidences no intent to change the agreed upon interpretation of language adopted in terms in the latter from the former. It evidences an intention that all terms of the former agreement except those dealing with overtime should have the same meaning as before. These Claimants are therefore entitled to six days sick leave with pay as alleged in their claim.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

That the Carrier and 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 Agreement was violated as alleged.

#### **AWARD**

Claim sustained.

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

**ATTEST:** H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.