Award No. 5154
Docket No. MW-4987

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MAINE CENTRAL RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement by failing to compensate B&B Foreman Anson B. Stewart for sick leave during the period December 17th to the 20th, 1948 inclusive;

(2) That the claimant Anson B. Stewart be reimbursed for the deduction made from his paycheck because of being off duty account of illness during the period December 17th to 20th, 1948 inclusive.

EMPLOYES' STATEMENT OF FACTS: On February 16, 1944, a Memorandum of Agreement was negotiated between the parties to the agreement, and the following letter addressed to General Chairman M. T. Simmons by Engineer S. G. Phillips became a part of that agreement:

"MAINE CENTRAL RAILROAD COMPANY
PORTLAND TERMINAL COMPANY

Portland, Maine
Feb. 16, 1944

"Mr. M. T. Simmons, General Chairman
Brotherhood of Maintenance of Way Employes
5 Thatcher St., Thomaston, Maine

Dear Sir:

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 Employes, effective May 28, 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.

Very truly yours,

/s/ S. G. Phillips
Engineer Maintenance of Way"

OPINION OF BOARD: On December 17 to 20, 1948, claimant was absent from duty because of illness. The Carrier declined to compensate claimant on these days contending that the sick leave provisions of the agreement were no longer in force.

On February 16, 1944, a Memorandum of Agreement was entered into which had the effect of including the claimant within the terms of the Maintenance of Way Agreement. On the same date a Letter Agreement was entered into which continued sick leave benefits in force in the amount of six days in any one year. This Board sustained this interpretation of the Letter Agreement on May 27, 1947 by Award No. 3566.

Under date of June 11, 1947, the Carrier served notice upon the employes of its desire to terminate that portion of the Memorandum Agreement which granted the sick leave benefits here in question. No agreement was reached. It is the contention of the Carrier that this notice and the manner in which the subject of the notice was handled had the effect of terminating the sick leave benefits referred to. The Organization contends that they are still in force.

It is the position of the Carrier that the notice served on June 11, 1947, under the provisions of Section 6 of the Railway Labor Act, had the effect of eliminating in its entirety, the Letter Agreement dated February 16, 1944. The elimination of the Letter Agreement would of course have the effect of eliminating annual sick leave for these claimants.

The notice of Carrier's desire to eliminate the Letter Agreement of February 16, 1944, was given by letter under date of June 11, 1947. Conference was had on the matter on July 8, 1947. On July 12, 1947, the Organization declined Carrier's request. On August 4, 1947, Carrier inquired by letter as to the action the Organization proposed to take. On August 14, 1947, the Organization's General Chairman replied in part: "I feel because of this there is no necessity for any further action on our part, unless of course we are advised of some further action by you on this matter." No communication was subsequently received from the Organization or the Mediation Board. It is the contention of the Carrier that this has the effect, under Section 6 of the Railway Labor Act, as amended, of eliminating the Letter Agreement.

Section 6 of the Railway Labor Act, as amended, provides:

> "Sec. 6. Carriers and representatives of the employes shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, **unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."** (Emphasis supplied.)

The quoted portion of the act clearly means that a Carrier or the representatives of employes shall give a 30 day written notice of an intended change in an agreement. The time and place for the beginning conference shall be agreed upon within 10 days and such conference shall be held within 30 days. If agreement is not reached and services of the Mediation Board have been requested or proffered, the proposed change will not be-

come effective. They become effective only if "a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Consequently the decision in the present case rests on the question whether the conferences were finally terminated and whether the ten day period mentioned in the last sentence of Section 6 of the Railway Labor Act had elapsed. The letter of inquiry written by the Carrier on August 4, 1947 constituted a continuance of negotiations on the part of the Carrier, otherwise there would have been no reason for its writing. It was an invitation to further discussion of the subject. The answer of the general chairman under date of August 14, 1947 indicated that the elimination of the Letter Agreement of February 16, 1944 was not acceptable and that nothing would be done by the Organization unless some further action was taken by management. The letter clearly disclosed that further correspondence or conference was expected before the Letter Agreement was abrogated. Under these circumstances, we do not think the ten day period mentioned in the last sentence of Section 6 of the Railway Labor Act had terminated or even commenced to run.

The termination of conferences mentioned in the Act must be such that the parties understood or ought to have understood it to be a final disposition of negotiations. It is evident that there was no mutuality of understanding on that question in the present case arising out of definite agreement or circumstances so conclusive that such a result should have been so considered. The nature of the conferences contemplated and the favor upon which they are looked in the Railway Labor Act requires a liberal construction of the provision. Where it fairly appears that conferences were mutually intended to be terminated, the ten day cut-off rule should be applied, otherwise not.

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 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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of December, 1950.