

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY 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-5956) that:

(a) The Carrier violated the Agreement between the parties in that it did not compensate Engine Dispatcher E. L. Vanderpool properly in accordance therewith for work performed July 5, 1965, and;

(b) The Carrier shall pay to E. L. Vanderpool the additional amount of 8 hours at time and one-half rate of the position as of July 5, 1965.

EMPLOYEES' STATEMENT OF FACTS: Claimant E. L. Vanderpool performed work on his regular assigned position of Engine Dispatcher on Monday, July 5, 1965, which was also his birthday for which he was paid one day at the time and one-half rate of his position.

Monday, July 5, 1965, was a regular assigned work day for claimant, his regular assignment being Thursday through Monday, Tuesday and Wednesday being rest days. The fourth of July holiday 1965 fell on Sunday and when one of the seven legal holidays listed in the Agreement falls on Sunday it is observed on Monday.

Claim was filed and appealed timely as per copies of the correspondence attached hereto as Employees' Exhibits Nos. 1, 2, 3 and 4. Conference was held with Manager of Personnel Llewellyn November 9, 1965.

The compensation of positions of Engine Dispatcher is on a basic monthly rate. Under an agreement between the parties as per attached copy marked Employees' Exhibit 5, the position of Engine Dispatcher held by Claimant was compensated daily as of date of claim as follows:

Monthly	169½ Hourly	Daily	174½ Hourly	Daily
\$468.92	\$2.76927	\$22.15416	\$2.68471	\$21.47768

The incumbents of monthly rated positions are paid on the daily rate based on 169½ hours for each work day of their assigned work week (exclusive of the seven legal holidays listed in Rule 43 (b)) as this rate includes the 56

Weekly rates that do not include holiday compensation shall receive a corresponding adjustment."

NOTE: In the interest of brevity we have quoted above only the pertinent provisions of Rule 43.

In addition to the Rules quoted above we attach as our Exhibit No. 6, copy of Article II — Holidays of Mediation Agreement of November 20, 1964, providing for birthday holidays.

As the evidence submitted herewith shows the claim presented has been handled timely and denied by the highest designated Carrier officer to whom appeals may be made creating a dispute which is herewith submitted in accordance with the Railway Labor Act, amended, to this Board for consideration and Award.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant E. L. Vanderpool was employed as a regular Engine Dispatcher on Monday, July 5, 1965, a Legal Holiday and also Claimant's Birthday, Claimant Vanderpool was scheduled to work and did perform service on that date. Vanderpool was paid for July 5th as follows:

1 day at punitive rate for the 8 hours' work he performed.

The position of Engine Dispatcher is a monthly rated position which includes additional compensation for the seven legal holidays and a birthday. Therefore Claimant Vanderpool was not entitled to additional holiday or birthday pay and none was claimed.

The Petitioner filed a time claim on behalf of Claimant Vanderpool for an additional day at time and one-half account working on a legal holiday which was coincidentally Claimant's Birthday.

The claim was denied on the basis that payment allowed was proper under agreement rules and past practice.

An Agreement between the Carrier and the Employees represented by the Clerks' Organization bearing an effective date of October 1, 1942, reprinted and revised on June 1, 1961, is on file with your Board and by this reference is made a part hereof.

OPINION OF BOARD: The Fourth of July 1965 was a Sunday. By agreement of the parties when this occurred the holiday was observed on the following Monday, July 5, which was Claimant's birthday. He worked on July 5 and was paid eight hours at the straight time rate for holiday pay plus eight hours at the time and one-half rate for having worked on the holiday. The Claim is for an additional eight hours' pay at time and one-half for Claimant having worked on his birthday.

The same issue as to the interpretation Article II — Holidays, Section 6 (f) and (g) of the National Mediation Agreement executed November 20, 1964 was adjudicated by this Board in Award No. 15013. For reasons stated in that Award we will deny the instant 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1967.