Award Number 213
Docket Number MW-225

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FLORIDA EAST COAST RAILWAY

DISPUTE—

"(a) Proper rate of pay of pumpers assigned to a given position with a specified and agreed to monthly rate of pay, when required to perform the duties of pumper at two or more separate pumping stations, there being specified and agreed to monthly rates of pay for each separate pumping station.

"(b) Compensation for wage loss suffered as result of improper wage payments."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employees involved in this dispute are respectively carrier and employees 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.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

An agreement dated April 12, 1932, is in effect between the parties.

The employees base their claim largely on Rule 32 of the Agreement, which covers rates of pay and reads in part as follows:

WATER SUPPLY SUB-DEPARTMENT

	Per month
Pipe Gang Foremen	$125.00
Assistant Pipe Gang Foremen	115.00
Pumper, Wonderwood	85.00
Pumper, South Jacksonville	88.00
Pumper, Bowden	88.00
Pumper, Greenland	78.00
Pumper, St. Augustine	88.00
Pumper, East Palatka	88.00
Pumper, Neoga	88.00
Pumper, Holly Hill	88.00
Pumper, New Smyrna	88.00
Pumper, Oak Hill	78.00
Pumper, Titusville	78.00
Pumper, Rockledge	78.00
Pumper, Melbourne	78.00
Pumper, Sebastian	78.00
Pumper, Vero Beach	78.00
Pumper, Fort Pierce	90.00
Pumper, Rio	78.00
Pumper, Camden	78.00
Pumper, Yamato	88.00
Pumper, Dania	88.00
Pumper, Buena Vista	88.00

Pumper, Hialeah	$88.00
Pumper, Goulds	78.00
Pumper, Homestead	92.00
Pumper, Glades	85.00
Pumper, Islamorada	88.00
Pumper, Marathon	88.00
Pumper, Cudjoe	78.00
Pumper, Key West	97.00
Pumper, Maytown	78.00
Pumper, Lake Pickett	78.00
Pumper, Solofka	78.00
Pumper, Illahaw	78.00
Pumper, Kenansville	78.00
Pumper, Yeehaw	78.00
Pumper, Hilolo	78.00
Pumper, Okeechobee	78.00

The evidence indicates that at the time the agreement was entered into (which was after the lapse of some years when no agreement was in effect covering this class of work), pumpers at fifteen (15) of the localities specified above were handling not only their own pumps, but pumps in adjoining localities, likewise specified above—sometimes one (1) such additional pump, and sometimes two (2). The carrier asserts, and it is not denied by any any evidence, that some of these combination assignments had been in effect for eleven (11) years, others for six (6) years, others for five (5) years, and the latest for twenty (20) months prior to the taking effect of the agreement. If these circumstances had been unknown to the representatives of the employes at the time of the negotiation of the agreement, they would have been of no significance in determining what was intended by the schedule of localities and wage payments listed above. But it is shown that one of the four representatives of the employes who negotiated and signed the agreement, H. S. Giddens, was himself a pumper, and for at least twenty (20) months prior to the agreement, had been in charge of a combination assignment, with his headquarters at Lake Pickett, and with two other pumps in his charge in the adjoining localities of Maytown and Solofka. The base rate for each of these localities was $78.00 per month, but in accordance with the practice both before and after the agreement, Mr. Giddens was paid only the base rate of the station at which he was headquartered, thus receiving $78.00 a month.

If the interpretation contended for by the employes were adopted, Mr. Giddens, from the moment the agreement took effect, would have been entitled to $78.00 a month on account of each of the three stations giving him a total salary of $234.00 a month, which, with one exception, would have been more than twice the salary of the highest paid employe of any other class covered by the agreement, and presumably so far out of line with the customary remuneration of pumpers, as not possibly to have been contemplated either by him or by the carrier. For some three years after the agreement took effect, Mr. Giddens made no claim for triple salary. As one of those who negotiated and signed the agreement, it is hardly conceivable that he would not promptly have made such a request if he and the other members of his committee had supposed that the agreement meant what it is now said to mean.

Ordinarily, established practices and failure to prosecute claims have no bearing upon the interpretation of written agreements where the agreements are so clear and explicit on their face as to leave no doubt of their meaning. To the Referee, at least, the agreement in this case is not so clear and explicit on its face as to leave no doubt of its meaning, and it is, therefore, permissible to consider established practices and failure to prosecute claims as bearing upon what the parties had in mind when they negotiated and wrote the agreement. Here it is established that one of the four representatives who negotiated the agreement knew, at least in his own case, of the practice of combination assignments, and his failure for three years to raise the question after he had signed the agreement is evidence, in absence of any contrary showing, that at the time he signed the agreement he understood it to mean what the carrier contends it means. And, in the absence of any contrary showing as to the intention of the parties, his knowledge of the practice and his acquiescence in the method of it seems fair to presume that his associates who participated

with him in the negotiation of the pumpers' wage scale understood also what was involved, for otherwise they could not have negotiated intelligently.

The representatives of the employes are fearful that, if the claim is denied, the carrier will be able, at will, to lay off men, set up further combinations, and thus effect a species of stretch-out. But this decision has no bearing upon that question. The carrier asserts, and there is no evidence to disprove, that since the agreement went into effect in 1932, no change of assignments has been made, except that at one station where two pumpers were employed, one was laid off. It may well be that if the carrier were to put into effect new combination assignments in such a way as to effect, in substance, a reduction in compensation by increase in work, a claim that the intent of the agreement was being violated might properly be considered. But that is not the claim before us, and it is not here decided.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary.*

Dated at Chicago, Illinois, this 13th day of March 1936.